

Broadcasting (Radio Multiplex Services) Bill

Memorandum concerning the delegated power in the bill for the Delegated Powers and Regulatory Reform Committee by the Department for Culture, Media and Sport

Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Culture, Media and Sport. It identifies the provision of the Broadcasting (Radio Multiplex Services) Bill which confers a power to make delegated legislation and explains why the power has been taken and the reason for the procedure identified.
2. The Bill would confer on the Secretary of State a power to make provision about small scale radio multiplex services. A radio multiplex is an apparatus for transmitting digital audio signals. Multiplexing consists of bundling a number of digital radio stations together to be transmitted digitally on a single frequency in a given geographic area. This makes it a more efficient transmission method, in terms of the amount of radio spectrum required, compared to analogue broadcasting (i.e. FM/MW frequencies). This sort of digital radio transmission is usually called Digital Audio Broadcasting ("DAB").

Clause 1: power to modify the provisions of Part 2 of the Broadcasting Act 1996 and Part 3 of the Communications Act 2003 to create a modified licensing regime for small scale multiplex services.

Power conferred on: Secretary of State

Power exercisable by: Order made by statutory instrument

Parliamentary procedure: Affirmative Resolution

Context and purpose

3. The clause inserts a new s.258A into Part 3 of the 2003 Act. Subsection (1) confers on the Secretary of State a power to make provision about small scale radio multiplex services, and the intention is to make appropriate provision by applying the existing material that creates a licensing framework for radio multiplex services with modifications, as indicated by subsection (3). The existing statutory provisions are those contained in Part 2 of the Broadcasting Act 1996 ("the 1996 Act") and Part 3 of the Communications Act 2003 ("the 2003 Act"). Subsection (5) clarifies that the existing power in s.402 of the 2003 Act includes a power to make incidental, supplemental or consequential modifications to other provisions of that Act and the 1996 Act.

4. At present, under the Part 2 of the 1996 Act, radio multiplexes that transmit over any area smaller than the whole of the UK can only be licensed as “local radio multiplex services” and the provisions of that Act mean that there is no ability to distinguish between large or small sub-national areas. The requirements of the 1996 Act were appropriate at the time, when multiplex technology required equipment that was large, expensive and difficult to run. It was anticipated that digital radio transmission would be the preserve of a small number of large operators.
5. The current configuration of digital radio transmission networks in the UK is of three national multiplexes licensed under s.47 of the 1996 Act (one operated by the BBC and two commercial networks) and 55 (roughly) county level-sized local multiplexes, licensed by the Office of Communications (“Ofcom”) to cover specific areas under s.51 of the 1996 Act.
6. Since the 1996 Act technology has developed considerably, enabling radio multiplexes which are much cheaper to set up and run and simpler to operate over small areas. This has led to calls from the radio industry for a new network of small scale radio multiplexes that operate as a sub-set of local multiplexes. The problem is that radio stations are able to broadcast at a low cost over a small area using analogue (FM/MW) frequencies, but that no such appropriate means exists for broadcasting on digital. Small scale, low cost multiplexes would therefore offer digital coverage for small, local radio stations across areas equivalent to their analogue broadcasts.
7. With funding provided by DCMS, the technology that underpins small scale radio multiplexes was subject to an extensive and successful trial run by Ofcom¹. Following the trial, the Department has assessed that the existing legislative framework for licensing radio multiplex services is inappropriate given the reduced size of coverage areas and audiences for radio transmission services targeted at much smaller localities. It is restrictive and is preventing innovation and exploitation of new, cheaper to operate technologies. The carriage costs and regulatory restrictions on existing local multiplexes are a barrier to small, local radio stations (whether commercial or community stations) wishing to broadcast on digital. It is this problem which the power proposed by this bill seeks to address.
8. The power in proposed new subsections 258A(1) and (2) would enable the creation of a new category of local radio multiplex services which are provided for a particular area or locality in the United Kingdom. Subsection (5) would enable an order to distinguish between areas that are currently served by a local multiplex service and those which are not. The intention is for the order to provide for a straightforward limit in an area unserved by local radio multiplex services (the limit to be measured in so many square kilometres of reasonable reception), but in an area that is already

¹ Ofcom’s report on the trials is available on its website and via this link:
https://www.ofcom.org.uk/__data/assets/pdf_file/0021/91371/SSDAB-Final-report-26-Sep.pdf

served to have a limit that ensures it is smaller than the existing local multiplex or multiplexes. This limit would be a maximum percentage of the area served by a local radio multiplex (where a proposed small scale multiplex area spans across more than one local radio multiplex area, the percentage would be applied to the cumulative total of the local multiplex areas). The intention is to give Ofcom the flexibility to grant small scale multiplex licences that best serve the demand for digital broadcasting in the various localities of the United Kingdom.

9. Although the Department will consult publicly before making an order, section 258A(4) is intended to enable the following sorts of specific provision to be included in an order:
 - a. Paragraph (a) would enable s.58 of the 1996 Act (duration and renewal of national or local radio multiplex licences) to be modified so as to allow Ofcom to set the duration of licences, within limits set by the order. The limits are likely to be shorter than the 12 years applying to all local multiplex licences under s.58. Longer licence periods were appropriate to reflect the level of capital investment needed to build and operate local multiplex networks and produce a return on investment for the network operator. The capital costs of setting up a small scale radio multiplex are significantly less and therefore shorter licence periods are more appropriate.
 - b. Paragraph (b) enables modification of s.44 of the 1996 Act (restriction on holding of licences under Part 2) to exclude persons already holding an interest in a national or a local multiplex licence from obtaining small scale licences. The intention is to ensure that existing operators of large media transmission networks do not turn the new multiplex services into significant revenue raising operations. This will help to ensure low carriage costs on the multiplex for the small commercial and community stations who will seek carriage on them.
 - c. With the same objective in mind, paragraph (c) enables modification of s.44 to restrict the holders of small scale multiplex licences to persons who operate on a non-commercial basis.
 - d. Paragraph (d) enables modification of s.51 of the 1996 Act (award of local radio multiplex licences) to place Ofcom under a duty to have regard to the effect of awarding a small scale multiplex licence on any existing local multiplex licensees operating in that area or an adjacent area. This reflects the intention that the network of small scale multiplexes are to provide a new platform for small scale transmission in localities where this is demand for it, and not to provide a means for existing regional stations broadcasting on digital to undercut the local multiplex network by seeking lower carriage costs and switching entirely from local to small scale multiplexes.

- e. Paragraph (e) enables modification of s.48 (reservation of capacity for independent national broadcasters) to require that Ofcom secures conditions in the licences of small scale multiplex operators to require that sufficient capacity is reserved for stations of a description set out in an order under s.262 of the 2003 Act. This is a reference to community radio stations, which must be operated primarily for the good of the community which they cover.
 - f. Paragraph (f) enables modification of s.48 of the 1996 Act (reservation of capacity for independent national broadcasters) to allow provision for the amount of capacity that can be reserved for community radio stations. Ofcom will be able to exercise discretion in assessing the amount of capacity (as a percentage) on the multiplex that must be so reserved. This can ensure Ofcom is able to set different levels of reservations depending on the balance of small commercial and community stations in the various areas to be covered by small scale multiplex services.
 - g. Paragraph (g) enables modification of s.60 of the 1996 Act (licensing of digital sound programme services) to allow for the modification of the definition of “local digital sound programme service” to include services carried on the new category of small scale multiplex services. This will avoid the need to create a new category of digital sound programme licence (the content licence required by radio stations broadcasting on local multiplexes) and expand the means of transmission available to persons with such licences or an equivalent licence created by an order under s.262 of the 2003 Act (community radio stations).
10. Many of the provisions of Part 3 of the 2003 Act do not relate to radio multiplex services and will not be applied. Those that would be applied include, for example, sections 316 - 328 and 334.

Justification

- 11. The subject matter of the power (the licensing and operation of radio multiplex services) is already subject to a regulatory structure. It is appropriate to deal with new technologies requiring different and less onerous regulation by way of modifying those provisions by secondary legislation once the principal of making provision for small scale multiplexes has been established by this bill.
- 12. It is also the intention that community radio stations (those of a description set out by an order under s.262 of the 2003 Act) will in the future be able to broadcast on small scale multiplexes. At present, the provisions modified by orders using that power only relate to analogue radio transmission. Flexibility is therefore needed in the creation of the new regulatory regime for small scale multiplexes to ensure that it is

compatible with a future order made under s.262 extending the community radio modifications to digital sound programme licences. Proposed section 258A(4)(g) envisages that community radio digital content (when a new order under s.262 makes provision for it) can be broadcast via small scale multiplexes. The flexibility offered by this power ensures the future compatibility of community radio with small scale multiplexes.

13. The existing provisions relating to radio multiplex licensing are highly technical in nature and need to be capable of keeping pace with fast-moving developments in the underlying technology used in small scale multiplexes. The new regulatory structure also needs to be capable of adapting more quickly to market developments than is realistically possible via primary legislation - for example if proposed protections to ensure carriage on small scale multiplexes for community radio stations needed to be strengthened in the run up to any future switchover to digital radio (whereby the analogue radio transmission network is closed down in a similar way to the phased digital television switchover completed in 2012). The subject matter of this bill is therefore well suited to a secondary power that is capable of modifying primary legislation.
14. The power is limited insofar as it is excluded from modifying itself and the provisions of Part 3 of the 2003 Act relating exclusively to sound broadcasting services (i.e. analogue radio) and to television services (see s.258A(3)(b)).
15. This power would follow other precedent powers in the 2003 Act to create lighter touch regulatory regimes for new types of media services via secondary legislation. These powers are those contained in s.244 of the 2003 Act (local digital television services) and in s.262 of the same Act (community radio services). The regulatory regime for both new types of services were created by way of modifying the relevant existing provisions by affirmative orders. As with those orders, the effect of the modifications made by this power will be deregulatory: small scale multiplexes will benefit from a less onerous licence regime with lower operational costs than existing national or local multiplexes, which is appropriate given their smaller coverage areas and more efficient technology than was envisaged at the time of drafting the primary legislation.

Justification for procedure selected

16. The power is exercisable by Order subject to approval by both Houses of Parliament, as is appropriate for powers that modify provisions of primary legislation. Before any such Order is presented in draft to Parliament, consultation will be undertaken with Ofcom and all interested stakeholders to ensure that the detailed provisions of the new licensing regime are appropriate to the range of localities which will benefit from the new multiplexes.

Department for Culture, Media and Sport
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