

BROADCASTING (RADIO MULTIPLEX SERVICES) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Broadcasting (Radio Multiplex Services) Bill as brought from the House of Commons on 6 February 2017 (HL Bill 99).

- These Explanatory Notes have been prepared by the Department for Culture, Media and Sport, with the consent of Baroness Bloomfield of Hinton Waldrist, the member who introduced the Bill in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill would create a power for the Secretary of State to modify Part 2 of the Broadcasting Act 1996 and Part 3 of the Communications Act 2003 to create a lighter touch licensing regime suitable for the new small scale radio multiplex services. A multiplex is an apparatus for transmitting digital signals, which are in turn decoded by digital radios. Digital radio transmission is licensed separately from radio services. Radio stations must seek the appropriate service licence from Ofcom according to the means of transmission on which they wish to broadcast. The subject of this bill is the licensing of digital radio transmission, rather than radio services.
- 2 Radio multiplex services are currently licensed by Ofcom under Part 2 of the Broadcasting Act 1996 – licences are awarded either for national coverage or for local (county-sized) coverage. The parameters of the small scale multiplex services will be set out in the Order that will be made using this power – but in summary the areas that they serve will, in general, be smaller than the county-level local multiplexes serving that area (likely to cover no more than 40% of that area). In areas where there is no local multiplex service in operation, such as Shropshire or the Scottish Borders, then the area that can be covered by a small scale multiplex will be subject to a maximum area of reasonable reception in square kilometres.
- 3 The Bill is made up of one substantive clause. The Bill seeks to allow the Office of Communications (“Ofcom”) a degree of flexibility on the areas to be covered by small scale radio multiplex licences. The Bill will modify the various procedures, provisions and conditions that are attached to the award of radio multiplex licences in Part 2 of the 1996 Act to create a lighter touch licensing regime suitable for the new small scale radio multiplex services.

Policy background

- 4 Currently, around 200 smaller commercial radio stations and 244 community radio stations transmitting on (mainly) FM and MW analogue frequencies do not have the opportunity to broadcast on digital radio (also known by the technical standard used – DAB/DAB+), this is due to a combination of factors:
 - insufficient capacity available on some local DAB multiplexes (55 county sized digital radio networks across the UK) especially those serving urban areas;
 - the costs of carriage on these networks can often be too high for many small local stations and the multiplex coverage area provided by county level local DAB multiplexes may be too large compared to their own ‘core’ FM transmission areas.
- 5 Many of these smaller commercial and community radio stations have indicated that they would like the option to broadcast on a terrestrial DAB platform to the areas they currently serve if a practical solution was available and if it could be done in a cost effective way.
- 6 In order to deal with this situation DCMS provided funding for a two year (2014-16) programme of work by Ofcom, building on previous technical development testing, to examine the potential of a new software-based approach to enable small scale broadcasting on the DAB platform. This has included 10 technical field trials of small scale DAB multiplexes in towns and cities across the country which have seen more than 100 small radio stations broadcasting on terrestrial DAB for the first time, including some new services.

- 7 These technical trials have been successful and Ofcom's work has demonstrated the viability of using a low cost software-based approach to broadcasting on DAB at a small scale. As a result, there is a need for these trial services to be put on a proper basis and for small scale radio multiple services to be rolled out more widely.
- 8 The proposed measure would provide the power to amend the conditions for digital radio multiplex licensing set out in the Broadcasting Act 1996 in order to create a new, lighter touch regulatory framework appropriate for the licensing of small scale (DAB) radio multiplexes. The overall impact on small commercial and community radio stations will be deregulatory. The detailed terms of the new regulatory framework would be subject to a consultation with industry.

Background on digital radio

- 9 The principle of digital radio is that the audio signal is converted to a digital format and compressed at the point of broadcasting into a single radio frequency and then decoded by the (listener's) digital radio set receiver. The main benefit of digital radio is the more efficient use of radio spectrum compared to analogue allowing for more radio services to be delivered to listeners, as well as the delivery of text and visual information.
- 10 In the UK digital radio broadcasting (often referred to as DAB which is a technical standard) is transmitted via 3 national multiplexes and 55 local (mainly county sized) multiplexes. A radio multiplex consists of a number of DAB radio stations bundled together to be transmitted digitally on a single frequency in a given geographic area. This makes it a more efficient way of transmitting compared to analogue.
- 11 The Office of Communications, "Ofcom", is responsible for the regulation and licensing of radio multiplex services (national and local).

Legal background

- 12 The power to be introduced by this Bill would be used to modify the existing legislative framework for the licensing by Ofcom of radio multiplex services in Part 2 of the Broadcasting Act 1996 and Part 3 of the Communications Act 2003. Modifications to those legislative provisions would be made to create a light touch regulatory regime that is more appropriate for small scale multiplexes, as opposed to national or local (county-level) digital transmission.

Territorial extent and application

- 13 The Bill will extend and apply to England and Wales, Scotland and Northern Ireland. Legislative competence for regulation of broadcasting is reserved to the UK Government in the Scottish, Welsh and Northern Irish devolution settlements.
- 14 As the Bill is a Private Member's Bill, the new English votes provisions in the House of Commons Standing Orders do not apply.
- 15 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Small-scale radio multiplex services

- 16 This clause inserts a new section 258A into the Communications Act 2003 to enable provision for small-scale radio multiplex services. Radio multiplex services are themselves defined in s.258 of the 2003 Act as a service (i) which is broadcast otherwise than by satellite so as to be available to members of the public and (ii) which provides, or is capable of providing, two or more digital sound services for simultaneous broadcast on the same frequency.
- 17 Sub-section (2) enables the Secretary of State by Order to define a small scale radio multiplex service as being distinct from existing national and local radio multiplex services.
- 18 The delineation of small scale radio multiplex services from local (county sized) multiplexes can be achieved by a two-step test to be set out in the Order. In an area that is currently served by a county-level local radio multiplex the small scale radio multiplex service can cover up to a maximum percentage of that area, likely to be set at around 40%.
- 19 In the event that there is no current local radio multiplex in operation in an area, Ofcom could also offer and issue a small scale radio multiplex licence to cover an area with reasonable reception up to a maximum level in square kilometres. This would potentially enable multiplex broadcasting within certain areas, such as Shropshire and Cumbria, which do not currently have a county-level local radio multiplex licensed service because of a lack of commercial viability.
- 20 Overall, the intention is to create a three tier system of radio multiplexes: national multiplexes for UK-wide transmission, local radio multiplexes for county-level transmission, and small scale radio multiplexes for sub-county level transmission or wider transmission where there was no existing local multiplex licensee.
- 21 Sub-section (3) provides the Secretary of State with the power to modify the regulatory framework for the licensing of radio multiplex services in Part 2 of the 1996 Act and Part 3 of the 2003 Act to create a new, lighter touch regulatory framework appropriate for the licensing of these types of services.
- 22 Sub-section (4) sets out some specific purposes for which the power may be used. These include:
 - Allowing for the licence periods for small scale radio multiplex services to be set according to the needs of small stations who will seek carriage on them rather than (as at present for local radio multiplexes) for a fixed period of 12 years, which is inappropriate given the much smaller capital outlay needed to set up and operate a small scale radio multiplex service.
 - Allowing for the exclusion of the BBC and other organisations with any existing licence holders in either the national or local radio multiplex services from holding a small scale radio multiplex licence.
 - Enabling requirements to be placed on small scale radio multiplex service licensees to operate on a non-commercial basis to ensure access for small commercial and community radio stations.
 - Allowing for a duty on Ofcom to have regard to the effect of granting a small scale radio multiplex service licence on existing or potential local multiplex licence holders. This will help to address concerns that some existing local (county-sized) radio multiplexes may be rendered financially unviable by adjacent small scale radio multiplex licences which can better target the audiences desired by smaller stations.

- Allowing for Ofcom to be able to include in small scale multiplex service licences conditions requiring that community radio stations (as a class) have rights of carriage on the multiplex.
 - Allowing for Ofcom to reserve a set percentage of capacity on the multiplex for such purposes.
 - Allowing radio stations holding a local Digital Sound Programme (DSP) licence or a modified community radio local DSP licence (if introduced) to broadcast on new small scale radio multiplexes – i.e. to amend the definition in s60(1)(b) of the 1996 Act to clarify that a local or community radio DSP licence includes broadcasting by means of a small scale multiplex. This will mean that commercial stations currently holding a local DSP licence will not have to apply for a new type of service licence, and community stations currently broadcasting only on analogue will be able to obtain an appropriate digital licence to enable them to be carried on local or small scale multiplexes whilst, if such an order is made, retaining their existing licence requirements as community radio stations.
- 23 Sub-section (5) enables an Order made under this clause to make different provision for different cases to deal with the interaction between small scale radio multiplexes and local radio multiplexes. Ofcom will be placed under a duty to consider the effect of granting a small scale radio multiplex service licence on existing local multiplex licence holders already covering the area that will be covered by a prospective small scale multiplex. This will allow Ofcom flexibility in the licensing of small scale multiplexes, for example by varying size of the area covered to ensure that the small scale multiplex is compatible with the needs of stations seeking digital transmission in a particular area of the country.
- 24 Sub-section (6) is a power to make incidental, supplemental or consequential modifications to other legislative provisions. This seeks to enable the effective operation of the new statutory framework for the licensing of small scale radio multiplex services.
- 25 Sub-section (8) requires any Order made under this clause to be subject to the affirmative resolution procedure of both Houses of Parliament.

Clause 2: Extent, commencement and short title

- 26 Clause 2 sets out details of the title, extent and entry into force of the Bill.

Commencement

- 27 The Bill (apart from Clause 2: extent, commencement and short title) will come into force 2 months after Royal Assent.

Financial implications of the Bill

- 28 The Department will issue an impact assessment on the laying of the draft Order using the power to be introduced by this Bill. This will follow a consultation on the detailed arrangements. This Bill has no direct effect, but provides for a power to modify the existing legislative framework for the licensing of radio multiplex services. The Department anticipates that those modifications will, for those eligible for small scale multiplex licences, be deregulatory.

Parliamentary approval for financial costs or for charges imposed

29 The Bill does not require a money resolution or a ways and means resolution.

Compatibility with the European Convention on Human Rights

30 The Bill is considered to be compatible with the European Convention on Human Rights.

Annex A – Territorial extent and application in the United Kingdom

This Bill extends and applies to England and Wales, Scotland and Northern Ireland.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	No	No	No	No
Clause 2	Yes	Yes	Yes	Yes	No	No	No	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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