EXPLANATORY MEMORANDUM TO

THE BROADCASTING ACT 1990 (INDEPENDENT RADIO SERVICES EXCEPTION) ORDER 2026

2026 No. 300

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Ian Murray MP, Minister for Creative Industries, Media and Arts at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

2.2 Janis Makarewich-Hall, Deputy Director for Radio, Advertising and Press at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ian O'Neill OBE at the Department for Culture, Media and Sport can be contacted by email at the following address with any queries regarding the instrument: ian.oneill@dcms.gov.uk .

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Section 97(1) of the Broadcasting Act 1990 (BA-1990) provides that it is an offence for a person to provide any relevant regulated radio service without being authorised to do so by or under a licence under that Act or the Broadcasting Act 1996. This Order specifies a category of services to which section 97(1) does not apply - restricted services that use non-broadcasting frequencies or use low-power devices on FM broadcasting frequencies.

4.2 The Order also revokes the Broadcasting Act 1990 (Independent Radio Services: Exceptions) Order 1990 and The Broadcasting Act 1990 (Independent Radio Services Exceptions) Order 2007 as services covered by these exceptions are no longer required or covered by the broader exceptions in this Order.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Restricted radio services are provided with a view to it being broadcast for reception for the purposes of specific events or within particular establishments or locations in the UK. These services include, but are not limited to, dedicated radio services for religious observances such as Ramadan, hospital radio services, university radio services, and commentary for events like air shows and regattas. However, the description of restricted radio services also covers:

5.1.1 audio distribution or relay services which includes a range of other low power uses including digital uses that have developed over the past 10 years;

5.1.2 other services which use non-broadcasting frequencies, and these services cannot be received on standard AM / FM radio sets available to the general public.

5.2 These audio distribution services transmit content and therefore are required to hold a Restricted Service Licence issued under the BA-1990 by Ofcom. These licences are known as Audio Distribution System - Restricted Service Licences (ADSRSL), unless the service is within the scope of exceptions provided under the Broadcasting Act 1990 (Independent Radio Services Exceptions) Order 2007.

5.3 Ofcom has highlighted an increase in private operators wanting to use alternative technologies to transmit sound content, e.g. silent discos operators wanting to transmit the music to wireless Bluetooth headphones paired nearby. It has also seen other operators wanting to use technology differently and in more innovative ways, such as swimming instructors wanting to share instructions with those in their classes through waterproof in-ear receivers.

5.4 The current licensing rules for radio services were developed in the late 1980s and early 1990s through BA-1990 and the Broadcasting Act 1996 at a time when the technological landscape was very different. Advances in digital technology mean that more operators are looking to use low-power radio communications to provide a wider range of services, however the current scope of the existing exceptions means that many new services are at risk of requiring a Restricted Service Licence.

5.5 The Order will therefore update and extend the scope of the existing exceptions to cover audio distribution or relay services which operate at low power on FM frequencies. These services can only be picked up by devices close by to the transmission source. The Order also exempts types of radio services - for example for events which are transmitted within a particular establishment or location - which use non-broadcasting frequencies and as such cannot be received on standard FM radio sets available to the general public.

5.6 Ofcom exempts certain types of low power services including some using FM frequencies from having to hold a Wireless Telegraphy Act 2006 (WTA-2006) licence due to the low power levels deployed and this Order brings the position for low power devices using FM frequencies into line with the treatment under WTA 2006.

What was the previous policy, how is this different?

5.7 To operate lawfully, audio distribution services required two licences issued by Ofcom in parallel:

5.7.1 a Wireless Telegraphy Act licence under the WTA 2006, which governs the transmission of the service and spectrum it occupies. However, low power devices

were exempt from holding a WTA licence but still required a Broadcasting Act licence.

5.7.2 a Broadcasting Act licence under BA-1990, which regulates the content of the service.

5.8 Services which were caught by the requirement to hold Broadcasting Act licence were required to comply with a range of requirements such as the Broadcasting Code which are not relevant for these services. Some services were exempt from having a BA-1990 licence because of previous Orders made under section 97(2) of BA-1990.

5.8.1 The Broadcasting Act 1990 (Independent Radio Services: Exceptions) Order 1990 - Covering audio services for reception in places other than homes (e.g. in shops, offices) - provided by businesses.

5.8.2 The Broadcasting Act 1990 (Independent Radio Services Exceptions) Order 2007 - This exempted community audio distribution systems that were used for the relay of live community events to adjacent buildings or locations and were often used by religious organisations wanting to connect to people in a hall nearby or to the congregation outside a place of worship.

5.9 As new services have been developed, the previous exceptions have become obsolete and have not kept pace with new services. This has created complexity and potentially unnecessary burdens for users in having to apply for licences and pay fees, and also for Ofcom in having to service the licenses. Ofcom believes the requirements could also stifle innovation as an unnecessary barrier to new technology. The Order will extend the policy on exceptions to cover a wider range of services to take account of technological changes.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 97(1) of BA-1990 provides that any person who provides any relevant regulated radio service (as defined in section 245 of the Communications Act 2003) without a licence under BA-1990 or the Broadcasting Act 1996 commits an offence. This includes any person who provides a restricted service, a radio service broadcast for reception within a particular establishment or location for the purposes of a particular event.

6.2 Section 97(2) of the BA-1990 enables the Secretary of State, by making an order, to provide that section 97(1) does not apply to descriptions of services thereby creating exceptions to the requirement to hold the appropriate licence. This Order accordingly makes an exception for two types of restricted services. First, any restricted service which is transmitted on non-broadcasting frequencies. Secondly, any restricted service which is transmitted using low-powered devices on FM broadcasting frequencies (e.g. audio distribution or relay services). A low-powered device is defined by reference to "effective radiated power" (the effective radiated power of a radio antenna in a given direction, that is the product of the power supplied to the antenna and the antenna gain relative to a half wave dipole in a given direction). This is a well-understood technical term.

6.3 Finally, this Order repeals the two previous orders made under section 97(2) of BA-1990 from 1990 and 2007 because they refer to services that are obsolete or covered by the broader exceptions in this Order. At present there are no services using the exemptions. As such, the revocation of the Orders will not have any impact on existing services e.g. requiring those services to be licensed.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes - exceptions to the requirement for the providers of independent radio services to hold Broadcasting Act licences can only be made by the order-making power in section 97(2) of BA-1990.

7. Consultation

Summary of consultation outcome and methodology

7.1 A formal consultation was carried out by Ofcom in 20221 to assess the regulatory framework surrounding ADSRSLs and other short-range services and the scope for further exceptions, alongside a wider review of the regulation of restricted services. Ofcom's statement published in July 2022 highlighted that the services in question are very low risk in terms of potential harm to the public, largely due to the restricted nature of these services. They are limited in scope by their very small coverage areas or by their use of non-broadcast frequencies.

7.2 The consultation sought views on the following question:

7.2.1 Do you have any comments on Ofcom's proposal to invite the Secretary of State for DCMS to consider making an order which would provide an exception for certain services from the need to hold a Broadcasting Act licence?

7.3 Responses to the overall consultation generally supported the proposals to reduce the regulatory burden on such restricted services. They highlighted the various ways in which the current licensing framework could pose challenges to the growth and development of new services. For example, services wishing to operate would need to pay application and annual licence fees to Ofcom and comply with legislative requirements such as the Broadcasting Code, even though they are services for small and selective audiences and are not 'broadcasting' to the public in the traditional sense. These costs, coupled with the burden of having to satisfy broadcasting standards and other licence requirements, could deter some potential service providers from launching new services, stifling innovation.

7.4 In light of the responses considered by Ofcom and the minimal risks posed by these services, Ofcom's advice to DCMS is that these services should be subject to a light-touch regulatory regime. Ofcom has asked that the Secretary of State consider making an order under section 97(2) of BA-1990 to:

7.4.1 exempt services that currently require an ADSRSL service licence under BA-1990 from the need to hold such a licence but to limit the exemption to very low power devices where those devices use FM broadcasting spectrum; and

7.4.2 for the exception to be flexible enough to cover future, emerging short-range services from the requirement to hold a Broadcasting Act licence.

8. Applicable Guidance

8.1 OFCOM will provide guidance on the changes made by this instrument by 1st May 2026, the date this Order comes into force.

---

[1] Ofcom: Restricted services: statement on increasing available spectrum and simplifying our approach to licensing - June 2022
https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-2-6-weeks/233724-changes-to-restricted-services-licensing/supporting-documents-published-with-consultation/restricted-services-statement.pdf?v=328234

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A De Minimis assessment is published alongside the Explanatory Memorandum on the legislation.gov.uk website. A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is minimal. By extending the scope of the exceptions, the De Minimis assessment assesses a small positive impact to current businesses who are required to hold Restricted Service Licences and who, as a result of the Order, will no longer have to do so.

9.3 The Order has no impact on the public sector other than Ofcom. The change will enable Ofcom to simplify licensing arrangements and will result in a small administrative saving over time.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Ofcom will feed back to DCMS any evidence received as to the effectiveness of the policy that would cause DCMS to revisit the policy. For example, any complaints raised flagging potential harm about services that would previously have needed a Broadcasting Act licence but no longer do as a result of this policy.

10.2 Furthermore, given the very small impact of this measure, as well as the fact that it entails an overall cost saving to businesses as opposed to increased cost, it would not be proportionate to do more monitoring and evaluation in addition to that already stipulated.

10.3 A review clause is not required under the Small Business, Enterprise and Employment Act 2015 as this Order does not make regulatory provision e.g. provision imposing requirements which relate to a qualifying (business) activity; this Order is deregulatory in nature and removes such requirements in relation to the services described in the Order.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).