EXPLANATORY MEMORANDUM

Title of the Instrument

1. The draft Community Radio Order 2004

Laying Authority and Purpose

2. This Explanatory Memorandum is laid before Parliament by Command of Her Majesty.

3. The purpose of this draft Order, if approved and made, is to establish a new form of local analogue radio service, to be known as community radio. The draft Order also makes provision using powers in paragraphs 11 and 13 of Schedule 14 to the 2003 Act to impose restrictions on the ownership of community radio licences. A document showing the provisions as modified will be made available on the web site of the Department for Culture, Media and Sport, at www.culture.gov.uk.

4. A draft of this Order is laid before Parliament for approval in accordance with section 262(5) of, and paragraph 17(2) of Schedule 14 to the Communications Act 2003.

5. The Department for Culture, Media and Sport is responsible for this draft Order.

Description

6. This draft Order makes provision to establish a new form of local analogue radio service, to be known as community radio. It uses the power in section 262 of the Communications Act 2003 to modify the provisions for local radio as set out in that Act and the Broadcasting Act 1990. This power is designed to allow the Secretary of State to create a new and special regulatory framework for community radio, based on the existing system for local analogue radio licences in Part 3 of the 1990 Act and Part 3 of the 2003 Act, but tailored to the particular needs and characteristics of community radio.

Matters of special interest to the Joint Committee on Statutory Instruments

7. The power in section 262 of the Communications Act 2003, which it is now proposed to exercise for the first time, came into force on 29th December 2003 by virtue of article 3(1) of and Schedule 1 to S.I. 2003/3142. The power primarily allows for the modification of existing legislation relating to radio services. Thus, for example, the order operates mainly by creating “community radio services” as a sub-set of

the existing “local sound broadcasting services”, as defined in the 2003 Act (see sections 245 and 362). Where the existing legislation directs the regulator, Ofcom, to take account of certain matters when awarding licences (e.g. section 105 of the Broadcasting Act 1990) or impose licence conditions on such licences (e.g. section 106 of that Act), the order modifies the legislation to allow special conditions to be imposed on community radio services. These are not textual amendments of the primary legislation, but mere modifications applicable only in the case of community radio licences.

8. Elsewhere, if the existing legislation applies to local sound broadcasting services, then it will also apply to community radio services unless modified by the draft Order to stop it doing so. For example, sections 104A and 104B of the 1990 Act are not to apply to community radio licences by virtue of paragraph 4 of the Schedule to the draft Order.

Legislative Background

9. Section 262 is within Part III of the Communications Act 2003 which deals with television and radio services. As indicated above, section 262 allows the Secretary of State to establish a new form of local analogue radio service, to be known as community radio. This is the first use of the power under section 262 of the Communications Act 2003 (see paragraph 3 above).

Policy Background

10. The Communications White Paper (December 2000) set out a number of potential benefits from community radio:

    - very local community based radio can help increase active community involvement, and local educational and social inclusion projects;

    - small radio stations can provide a nursery for the next generation of broadcasters - providing hands-on training and experience;

    - such stations can also satisfy the demand for access to broadcasting resources from specific communities, whether based on locality, ethnic or cultural background or other common interests.

11. The Radio Authority, and now Ofcom, have been administering a pilot study of community radio stations since February 2002. These stations have been subject to an independent evaluation by Professor Anthony Everitt (“New Voices”, March 2003 and “New Voices – an update” October 2003). In the light of these findings and other representations, Ministers announced on 15 May 2003 that, once the Communications

Act came into force, they intended to bring forward an Order which would establish a new tier of community radio.

12. The Secretary of State published for consultation a draft Community Radio Order on 10 February 2004. The Secretary of State has now considered all the comments put to her and now lays the draft Order to which this explanatory memorandum relates before Parliament for its consideration.

Characteristics of community radio services

13. The draft Order provides that community radio services should be provided for the good of the members of the public or particular communities and deliver social gain, rather than for commercial reasons or for the financial or other material gain of the individuals providing the service.

14. Social gain is defined in articles 2(2) and 2(3). Services must deliver all the examples of social gain set out in article 2(2), whereas article 2(3) gives other examples of social gain objectives which stations may seek to deliver.

15. Community radio services should be not-for-profit or non-profit distributing. Any profit should be used to secure or improve the future of the service, or to deliver social gain to the community it serves or to other members of the public.

16. Community radio services must provide an opportunity for the communities they serve to become involved in the running and management of their stations, and must be accountable to those communities.

Ownership Restrictions

17. A licence holder has to be body corporate (as this facilitates accountability arrangements). No person can hold more than one licence and a licence cannot be held by a BBC, Channel 4 or S4C company, nor by any person who currently holds a Broadcasting Act licence, other than a licence to provide a community radio service, a television licensable content service, or a radio licensable content service. These restrictions also apply to persons connected with the holders of licences. The media ownership rules which apply to other local radio services are disapplied by article 5.

Modification of legislation in relation to community radio services

18. The draft Order also sets out in the Schedule various modifications to the Broadcasting Act 1990 and the 2003 Act as they will apply to community radio services. The main points are set out below.

Licensing of community radio services

19. In the main, the modifications to sections 104-106 of the Broadcasting Act 1990 are intended to ensure that community radio stations have the characteristics set out in article 3 of the draft Order. In addition, these modifications set out important restrictions on the extent to which community radio stations can take advertising and sponsorship (pursuant to section 262(3) of the 2003 Act). These can be summarised as follows:

    - There should be no community service stations licensed if the service would overlap with a commercial station whose measured coverage area (MCA) includes 50,000 adults or fewer.

    - Any community radio station which would overlap with a commercial station whose MCA includes fewer than 150,000 adults will not be allowed to take any advertising or sponsorship;

    - In all other cases, there will be an upper limit on advertising and sponsorship of 50% of the income arising from the service. In determining the appropriate amount of advertising, Ofcom must take into account the need not to prejudice unduly the economic viability of other commercial stations.

20. In addition, community radio stations cannot receive more than 50% of their income from any one source.

Compatibility with the European Convention on Human Rights

21. In the Minister's view the provisions of the draft Order are compatible with the Convention rights.

Consultation

22. There has been extensive consultation on these proposals with the Radio Authority (and latterly Ofcom), the Community Media Association and the Commercial Radio Companies Association.

Extent

23. This order applies to the whole of the United Kingdom.

Regulatory impact

24. The order makes no changes to the existing licensing regime for commercial radio services. There will be some costs falling to Ofcom associated with administering the licensing regime for community radio. This will be a matter for Ofcom.

Costs to the public or the Exchequer

25. None directly arising from the draft Order. However, Ministers have announced that £0.5 million will be available to support community radio in 04/05 and 05/06. Decisions on funding beyond this period will be taken in due course.

Departmental contact

26. Further information concerning the proposed legislation can be obtained from Stuart Brand (stuart.brand@culture.gsi.gov.uk; 0207 211 6416).

DEPARTMENT FOR CULTURE, MEDIA and SPORT
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