EXPLANATORY MEMORANDUM TO

THE COMMUNITY RADIO ORDER 2025

2025 No. 160

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 Stephanie Peacock, Minister for Sport, Media, Civil Society and Youth, confirms that this Explanatory Memorandum meets the required standard.

2.2 Robert Specterman-Green, Director of Media and International at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ian O'Neill at the Department for Culture, Media and Sport. Telephone: 07706 381491 or email: ian.oneill@dcms.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order contains provision for a special regulatory framework for a category of analogue radio broadcasting services known as "community radio services". These radio services are provided primarily for the good of members of the public or of particular communities rather than for commercial reasons and provide some form of social gain to their communities.

4.2 This Order consolidates the Community Radio Order 2004 ("the 2004 Order"), which created the regulatory framework for community radio, and also makes two key policy changes: to allow OFCOM to extend community radio licences for a fourth time and to remove all but one of the restrictions that limit the amount of income a community radio licence can receive from advertisements and sponsorship - see paragraphs 5.1 to 5.5 below.

4.3 This Order also makes amendments to the Small-scale Radio Multiplex and Community Digital Radio Order 2019. That Order created a special regulatory framework for digital community radio. The amendments are consequential to the changes made to the regulatory framework for community radio by this Order and consequential to amendments made by the Media Act 2024 to broadcasting legislation.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Following the issuing of the first full community radio licences in 2005, the community radio sector has grown to be a vital part of the UK radio landscape. There are now more than 300 analogue (AM / FM) community radio services (with digital radio providing further opportunity for more stations to broadcast to localities across the UK).

5.2 Analogue radio broadcasting continues to represent the vast majority of community radio listening, and is likely to continue to do so over the coming years as community digital radio develops. The Digital Radio and Audio Review, published in October 2021, concluded that FM radio services would be needed in the UK until at least 2030. It is probable that community radio stations will need to stay on analogue networks for a period after that until such time as the vast majority of listeners have migrated from analogue radio.

5.3 The existing community radio licences will begin to expire from October 2025. The changes made by this Order enable OFCOM to extend such licences for a fourth time for a period of up to 10 years. These changes are necessary to ensure that community stations and OFCOM have clarity about the future of licences for the next ten years, and to help support the future sustainability of community radio.

5.4 The changes made by this Order also remove nearly all the restrictions imposed on community radio stations on the level of income they can receive from advertising and sponsorship. These restrictions were put into place to limit the commercialisation of the sector, and to provide an appropriate level of protection to existing small commercial stations at a time when the impact of community stations could not be quantified. The removal of these restrictions for the majority of community stations will give them greater flexibility to develop their commercial revenues and remove the requirement to report advertising and sponsorship revenues to OFCOM.

5.5 These requirements are also no longer necessary to protect commercial radio stations though a new restriction is introduced for a small number of community stations which overlap with small independent radio stations that are not operated as part of a national, regional or local group. For those community stations, the income limit from advertising and sponsorship is £30,000 per year.

What was the previous policy, how is this different?

5.6 The regulatory framework for community radio established by the 2004 Order set out the characteristics of community radio services: for example, such 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. Community radio services should also 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. These characteristics are not being changed.

5.7 This regulatory framework only allowed for a community radio licence to be extended on three occasions for a period of up to five years on each occasion. This means that licences granted in 2005 for a period of five years and extended three times for five years on each occasion will start to expire in 2025 (after 20 years).

5.8 The regulatory framework also set out restrictions on the level of income a community radio station could obtain from advertising and sponsorship. These were relaxed in 2010 and 2015. The previous policy, prior to this Order, allowed all community radio stations to receive a fixed revenue allowance each year consisting of income taken from advertising and sponsorship. The annual fixed allowance was set at £15,000.

5.9 For community stations operating in the locality of a small commercial station, where that commercial station has not taken advantage of provisions introduced into the Broadcasting Act 1990 by the Digital Economy Act 2010 allowing commercial stations greater flexibility in producing 'locally-made' programming, this was an absolute restriction.

5.10 For community stations operating in the locality of a local commercial service that had taken advantage of those provisions were allowed to take an additional level of income from advertising and sponsorship (potentially up to 50% of their annual income above the £15,000 base). Similarly, community stations with no such local competition could raise 50% of their annual revenue above £15,000.

6. Legislative and Legal Context

How has the law changed?

6.1 This Order consolidates the Community Radio Order 2004. The Order makes provision for a special regulatory framework for community radio services (as described in article 3 of this Order) by providing that Part 3 of the Broadcasting Act 1990 and Part 3 of the Communications Act 2003 have effect, with modifications, in relation to such services.

6.2 In doing so, the Order largely replicates the provisions of the 2004 Order except for three areas. First, the modifications in the Schedule to the Order to the Broadcasting Act 1990 take into account the amendments made to that Act by Part 5 of the Media Act 2024. For example, section 42(4) of the 2024 Act repealed section 105 of the 1990 Act and therefore paragraph 5 of the Schedule to this Order has re-inserted section 105 so far as it applies to community radio. Secondly, there are a number of minor amendments to modernise the drafting of the Order.

6.3 Finally, the modifications in the Schedule to the Order have been amended to make the policy changes set out above. In particular:

6.4 Section 105 of the 1990 Act, as it applies to community radio, has been amended to remove the previous restrictions on the amount of income community radio stations could obtain from advertisements and sponsorship and to include a new income restriction of £30,000 on community radio stations that overlap with small (fewer than 150,000 potential listeners), independent commercial stations.

6.5 Section 253A of the Communications Act 2003, as it applies to community radio, has been amended to allow for four extensions of a community radio licence and for the fourth extension to be of a period of up to 10 years.

6.6 This Order also makes amendments to the Small-scale Radio Multiplex and Community Digital Radio Order 2019. The 2019 Order makes provision for a special regulatory framework for small-scale radio multiplex services and community digital sound programme services by providing that Part 2 of the Broadcasting Act 1996 has effect, with modifications, in relation to such services. Some of these amendments are consequential to the provisions of this Order (and the revocation of the 2004 Order). And other amendments are consequential to the amendments made by the Media Act 2025 to the provisions of the 1996 Act which are modified by the 2019 Order.

Why was this approach taken to change the law?

6.7 This was the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The previous government consulted on whether to amend current legislation to allow OFCOM to extend community radio licences that were approaching expiry at the end of 2025. The previous government did not publish a response to this consultation before the General Election was called.

7.2 The consultation ran from 8 November 2023 to 31 January 2024. Relevant community and commercial radio stakeholders were invited to partake in the consultation, and a total of 44 radio stations, industry bodies and individuals provided written responses.

7.3 The consultation sought views on whether the government should make provisions to allow analogue community radio licences to be extended for a further period, and if so, what the length of this period should be. It also sought views on the current restrictions on the capacity of community radio stations to raise money through advertising and sponsorship.

7.4 The response to the first proposal – related to the extension of community radio licences – was strongly in favour of increasing licensing timelines. Community radio stations were generally in favour of increasing the licensing period by five years, a longer fixed period such as ten years, or in perpetuity, with strongest support for a further ten-year extension. This approach was favourable to community radio stations as it was seen to give community radio stations more time to develop and grow within their communities.

7.5 However, although fewer in numbers in terms of respondents, most commercial radio stations advocated for the readvertising of licences. This suggestion was largely based on the argument that the readvertising of licences would encourage new entrants into the community radio space and result in greater adherence to programming commitments. With these comments in mind, the most appropriate approach was deemed to be a ten-year extension for all licences.

7.6 As regards to the proposed relaxation of restrictions placed on community radio's capacity to generate revenue through advertising and sponsorship, responses from community radio stations generally favoured a relaxation of restrictions with most respondents, including the Community Media Association and UK Community Radio Network, arguing for a complete lifting of advertising restrictions.

7.7 However, again although fewer in numbers in terms of respondents, commercial radio stations argued that advertising restrictions should remain unchanged. Radiocentre proposed that any change to advertising restrictions should be approached with caution, in order to ensure that proper safeguards were put in place to protect smaller commercial radio stations that may be operating in the same regions as community radio stations.

7.8 Given the generally strong support expressed for the relaxation of advertising restrictions, the consultation response favoured amending the Community Radio Order 2004 to remove all restrictions placed on community radio stations in relation to advertising and sponsorship.

7.9 However, concerns remained about the potential impacts of this change on small independent commercial stations where there is currently a £15,000 restriction in place on overlapping community radio stations.

7.10 Representations made by the Community Media Association and UK Community Radio Network were noted carefully as well as those from commercial stations including from stations affected.

7.11 It was therefore concluded that the best approach was to retain limits for these community stations for a time limited period until 31 March 2028 but, in recognition of the impact of the restrictions, lift the threshold to £30,000 per year with effect from April 2024.

8. Applicable Guidance

8.1 OFCOM will provide guidance to community radio licence holders on the changes made by this instrument by 1st April 2025.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A De Minimis assessment is submitted with this memorandum and 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 understood to be minimal.

9.3 With regards to the extension of community radio licences from five years to ten years, the main monetised benefit to business is the lower number of businesses having to apply for a new licence over the appraisal period and the cost savings to business from incumbent licence holders not having to take the time to reapply for a licence or from OFCOM not having to evaluate bids as regularly.

9.4 The main monetised costs to business of extending licences to ten years is the familiarisation costs they incur, and the loss in revenue for OFCOM from receiving fewer relicensing fees due to the number of incumbent licence holders forced to expire over the appraisal period being reduced to zero.

9.5 The overall impact is a net cost saving to community radio stations, as no radio stations would have to incur the cost of preparing bids or pay the fee to re-acquire their licence after expiration.

9.6 In terms increasing the limit on commercial revenue for community radio stations to £30,000 per year (and further allowing stations that do not overlap with a small commercial station to raise up to 50% of their annual revenue in addition to the £30,000 allowance they already receive from commercial sources), the impact to business was also found to be minimal.

9.7 OFCOM estimates that there are now only five community radio stations whose coverage area overlaps with that of a small commercial station and who would subsequently be subject to the £30,000 maximum cap.

9.8 Furthermore, OFCOM roughly estimates around 66% of community radio services have an on-air income of less than £15,000. It is therefore unlikely that increasing the

fixed revenue allowance to beyond £15,000 would have any notable benefits for these stations, as they aren't currently using the maximum allowance currently available to them.

9.9 As increasing or removing the annual allowance for community radio stations is a 'permissive' regulatory intervention, it is difficult to know how many and to what degree incumbent community radio licence holders will take advantage of the increased limit.

9.10 Due to this difficulty and the lack of evidence mentioned previously, it has not been possible to monetise these potential benefits for these options. However, as only a number of community stations are currently meeting their £15,000 annual limit currently, we would expect the benefits of increasing the limit to above this level to not produce benefits significant enough to risk the EANDCB of this analysis being in breach of the +/-£5 million de minimis threshold.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Stephanie Peacock, Minister for Sport, Media, Civil Society and Youth has made the following statement:

10.2 "I do not consider it appropriate to include a review clause in the legislation. The Department's regulatory triage assessment concludes that the impact on businesses of extending community radio licences and increasing the fixed revenue allowance for these stations is less than £5m per year."

10.3 However, DCMS keeps radio regulations under review and will monitor the impact of the changes in 3 to 5 years time or sooner if issues are raised by the community or commercial radio sector about the operation and effectiveness of the changes. The Order includes a specific requirement enabling the Secretary of State to ask OFCOM to provide advice on the advertising and sponsorship.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Article 1(2) of this instrument provides for the Order to come into force on 1st April 2025. The instrument does not impose duties on people that are significantly more onerous than before nor does it require them to adopt different patterns of behaviour. The changes made by the instrument are beneficial to those primarily affected (community radio licence holders)) in that it enables them to apply for a fourth extension of their licences and receive more income from advertising or sponsorship. The licence holders are therefore keen for the instrument to be commenced as soon as possible.

12. European Convention on Human Rights

12.1 The Secretary of State for Culture, Media and Sport has made the following statement regarding Human Rights:

> "In my view the provisions of the Community Radio Order 2025 are compatible with the Convention rights."

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").