EXPLANATORY MEMORANDUM TO

THE COMMUNITY RADIO (AMENDMENT) ORDER 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Community Radio Order 2004 (the Order), to allow community radio stations to raise a larger proportion of their funding from taking paid for advertising or sponsorship than currently allowed. It also amends the list of persons which can hold a community radio licence. In addition, it updates the Order following changes made to the Broadcasting Act 1990 by the Digital Economy Act 2010.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Order, made under section 262 of the Communications Act 2003 (the 2003 Act), contains provisions creating a special regulatory framework for a new category of radio broadcasting services known as "community radio services". The Order includes modifications to the Broadcasting Act 1990 (the 1990 Act) and the 2003 Act allowing for a licence to provide community radio services to be granted. In particular, the Order modifies section 105 of the 1990 Act (which deals with the grant of broadcasting licences) to require OFCOM to have regard to certain matters in determining whether to grant a licence to provide a community radio service:

a. OFCOM must have regard to the need to ensure that the service does not prejudice unduly the economic viability of any other local (i.e. local commercial) service;

b. where the community radio service overlaps with any other local licence with a potential audience of no more than 150,000 adults, the licence to provide a community radio service must include conditions prohibiting the taking of remunerated advertisements or sponsorship of programmes contained in the service;

c. in other cases, the licence must include appropriate conditions to ensure that the income from remunerated advertisement and/or sponsorship of programmes is limited.

4.2 Part 2 of the 1990 Act also makes provision for the renewal of and variations to a broadcasting licence. The Order also makes modifications to those provisions, by

disapplying sections 104A and 104B which relate to the renewal of local broadcasting licences. The Order inserts a new section 253A into the 2003 Act which provides for the extension of licences to provide a community radio service.

4.3 Paragraph 11 of Schedule 14 to the 2003 Act, allows the Secretary of State to make an Order containing provisions which relate to who may or may not hold a licence to provide a community radio service. The list of those disqualified from, and permitted to hold a licence to provide a community radio service is set out at article 6 of the Order.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Culture and the Digital Economy, Ed Vaizey MP has made the following statement regarding Human Rights:

In my view the provisions of the Community Radio (Amendment) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 Community radio stations are run largely by not-for-profit organisations, for the social gain of the communities they serve. The first community radio stations were launched in 2005, since when the sector has continued to grow. Around 290 stations have now been licensed, of which 217 are currently on air. Demand for community radio licences remains high, and OFCOM are currently conducting a third round of licensing.

7.2 Notwithstanding this apparent success, many community radio stations are struggling to build a long term sustainable business model. The average income of community radio stations has declined year on year since 2007, due in part to a decrease in available grant funding. To date, 40 stations licensed by OFCOM have handed their licences back, or had them revoked, of which 18 never managed to launch on-air services. In many cases, problems in securing sufficient funding to cover essential costs was cited as the main reason for this.

7.3 In the “Connectivity, Content and Consumers: Britain's digital platform for growth” strategy paper published on 30th July 2013, the Government announced it would consult on the current funding restrictions for community radio.

7.4 At present, any community radio station whose coverage overlaps with a small commercial radio station (defined as a station covering an area with fewer than 150,000 people over the age of 15) is prohibited from taking any paid-for advertising or sponsorship for any programme on its station. When considering the licensing of a new community radio station, OFCOM must look at the economic viability of the surrounding

commercial radio stations. If the community station does not overlap with a small commercial station, then OFCOM may allow that station to raise up to 50% of its annual income from advertisement or sponsorship, but the precise percentage will depend on OFCOM's view on the impact such advertisement or sponsorship might have on surrounding commercial radio stations. The Order requires OFCOM, when looking at an application for a new licence, to consider that impact, and if there is a detriment, OFCOM may amend the percentage of income which those stations are permitted to take.

7.5 The underlying principle of applying funding restrictions to community radio is twofold. Firstly, as a mechanism to limit the commercialisation of the sector, and as a result secure the delivery of social gain. Secondly, to provide an appropriate level of protection to existing small commercial radio stations at a time when the impact of community radio stations could not be quantified.

7.6 The Digital Economy Act 2010 made a number of changes to the commercial local radio sector, including changes which would allow those stations to reduce costs. This included allowing commercial stations in areas defined by Ofcom to collaborate in programme making, and also to make programmes outside their licensed area. There are many small radio stations which are taking advantage of this change in their licences to reduce their costs and thus help their commercial viability.

7.7 Following consideration of the sector in light of the changes in the Digital Economy Act 2010, we proposed in our consultation the following measures:-

a. to allow all community radio stations to receive a fixed revenue allowance comprising income taken from advertising and sponsorship. Those community radio stations which overlap with small commercial stations may only raise this amount from advertising and sponsorship;
b. to allow a community radio station which overlaps with a small commercial station (where the latter station has taken advantage of the changes in the Digital Economy Act to collaborate more on programme making) to raise up to the fixed revenue allowance per annum from advertising and sponsorship, and then also to make up to 50% of their annual income (not including the amount of the fixed revenue allowance) from those sources;
c. to allow any community radio station which is not subject to any restrictions (as in paragraph (a) above) to raise up a fixed revenue allowance per year from advertising and sponsorship, and also to make up to 50% of their remaining annual income from those sources.

7.8 In addition, we also wanted to consider whether to allow community radio licences to be renewed for a further 5-year period. At present they are licensed for 5 years, and can be renewed once (also for a period of 5 years). The Order does not allow OFCOM to extend licences beyond that period, which may deter some or all licence holders from investing time and resources longer term unless they see themselves continuing in operation beyond this period.

7.9 The 1990 Act was amended by the Digital Economy Act 2010 to include further provision about the renewal of local licences (section 104AA to 104AC). These provisions are not intended to apply to licences to provide a community radio service, and so are also disapplied by this instrument.

7.10 In addition, we consulted on whether, and at what period the amount of the fixed revenue allowance should be reviewed.

8. Consultation outcome

8.1 The consultation ran from 13th February to 23rd April 2014. The Government has published a response to the consultation which is available here https://www.gov.uk/government/organisations/department-for-culture-media-sport .

8.2 We received around 100 responses; 40 from community radio stations, 13 from commercial radio stations and 36 other responses. We worked closely with OFCOM, the Community Media Association (key representative member body for community radio) and Radio Centre (key representative member body for commercial radio) in encouraging and collating responses to the consultation. The consultation was also published on the gov.uk website and members of the public were also invited to comment. The consultation responses showed a clear divergence of view: the community radio sector broadly supporting changes whilst the commercial radio sector opposing any further relaxations.

8.3 The overwhelming feedback from the community radio sector was support for increased flexibility for community radio stations, particularly stations which are currently prohibited from taking any sponsorship or advertising. The responses revealed examples of where community stations have had to reduce their services or in some cases turn away sponsorship from local businesses. The responses from the community radio sector also supported proposals to allow licences to be renewed on one further occasion to give stability to established and successful community stations.

8.4 In contrast, the comments from commercial radio stations were mostly opposed to any relaxations raising concerns about the impact on smaller commercial stations. The main concerns were that community radio stations would have more freedom to compete directly with commercial stations, undermining the viability of small, independently run commercial stations. However, a number of the comments raised the issue of the enforcement of existing obligations by OFCOM and concerns about the ability of OFCOM to hold community stations to their licence conditions. That was outside the scope of the consultation.

8.5 Having considered very carefully all the comments and contributions made we considered that the case for changes to the current restrictions has been made. After the consultation we made the following decisions based on the consultation responses:-

- To allow all community radio stations to receive a fixed revenue allowance each year comprising income taken from advertising and sponsorship. The

annual fixed allowance will be set at £15,000. This is around 25% of the approximate mean income of community radio stations;

- OFCOM will continue to consider the economic impact on neighbouring commercial stations on the grant of licences, but will also assess that impact in relation to the licence amendments to allow up to 50% of annual revenue to be raised from advertisements or sponsorship. OFCOM has the power to modify the percentage of annual income that can be raised (in addition to the £15,000) from advertising and sponsorship, in the case of overlaps with small, independently run commercial stations;
- For stations that fall into paragraph 7.7 (b) and (c) above, they may receive £15,000 plus 50% of annual income from advertisement and sponsorship;
- The Secretary of State will have the power to ask OFCOM to review the figure of £15,000 per annum to ensure that it remains an appropriate figure and does not have a substantially detrimental impact on the commercial radio sector;
- To confirm that community radio licences can be renewed for a further 5-year period.

8.6 For example, a community radio station falling in paragraph 7.7 (b) and (c) above with an annual income of £100,000 would be allowed to raise £15,000 per annum from advertising and sponsorship and a further 50% of their annual income disregarding the £15,000 (i.e. (£100,000 - £15,000) x 0.50 = £42,500) from the same sources. The total raised from those sources per year would be £57,500.

8.7 In drawing together the changes, we will continue to ensure that protections remain in place for the smallest, independently run commercial stations.

8.8 We recognise that evidence base evaluating the impact of community radio on the communities served is very limited and we will commission research in 2015/16 to address this gap. We will involve both Radio Centre, the Commercial Radio Association, and the Community Media Association on this project.

9. Guidance

9.1 When this instrument comes into effect OFCOM will provide guidance for the sector, and update material on their website to reflect the changes as appropriate (http://licensing.ofcom.org.uk/radio-broadcast-licensing/community-radio/).

10. Impact

10.1 There is a positive impact on community radio stations which can be either businesses or charities as it permits the receipt of new or additional income taken from advertisements and sponsorship.

10.2 The impact of this instrument on OFCOM is broadly neutral.

10.3 An Impact Assessment is attached to this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 This instrument applies to small businesses.

11.2 This instrument does not impose new burdens on small businesses. It provides a benefit to small business by amending and removing some funding restrictions on community radio stations.

12. Monitoring & review

12.1 There is a power in this instrument for the Secretary of State to request that OFCOM carries out a review of the amount of money that community radio can raise per annum through advertising and sponsorship.

12.2 The Government will commission research in 2015 to look at the economic impact of these changes on commercial stations.

13. Contact

Maria Loizou at the Department for Culture, Media and Sport Tel: 0207 211-6518 or email: maria.loizou@culture.gov.uk can answer any queries regarding the instrument.