

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT SMALL-SCALE RADIO MULTIPLEX AND
COMMUNITY DIGITAL RADIO ORDER 2019

Tuesday 16 July 2019

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The Committee consisted of the following Members:

Chair: MR LAURENCE ROBERTSON

† Brennan, Kevin (*Cardiff West*) (Lab)
 † Burt, Alistair (*North East Bedfordshire*) (Con)
 † Churchill, Jo (*Bury St Edmunds*) (Con)
 † Docherty, Leo (*Aldershot*) (Con)
 † Elmore, Chris (*Ogmore*) (Lab)
 Fellows, Marion (*Motherwell and Wishaw*) (SNP)
 Godsiff, Mr Roger (*Birmingham, Hall Green*) (Lab)
 † Hill, Mike (*Hartlepool*) (Lab)
 † Huddleston, Nigel (*Mid Worcestershire*) (Con)
 † James, Margot (*Minister for Digital and the Creative Industries*)

† Lamont, John (*Berwickshire, Roxburgh and Selkirk*) (Con)
 † Lefroy, Jeremy (*Stafford*) (Con)
 † Lewer, Andrew (*Northampton South*) (Con)
 † Mann, John (*Bassetlaw*) (Lab)
 † Mills, Nigel (*Amber Valley*) (Con)
 † Phillips, Jess (*Birmingham, Yardley*) (Lab)
 Smeeth, Ruth (*Stoke-on-Trent North*) (Lab)
 Yohanna Sallberg, *Committee Clerk*
 † **attended the Committee**

Second Delegated Legislation Committee

Tuesday 16 July 2019

[MR LAURENCE ROBERTSON *in the Chair*]

Draft Small-scale Radio Multiplex and Community Digital Radio Order 2019

8.55 am

The Minister for Digital and the Creative Industries (Margot James): I beg to move,

That the Committee has considered the draft Small-scale Radio Multiplex and Community Digital Radio Order 2019.

It is a pleasure to serve under your chairmanship, Mr Robertson. The Government are a passionate supporter of radio, whether it is from the BBC, the commercial sector or the growing community radio sector. Today, we are debating a new approach that will open up digital radio to the smaller commercial and community stations.

Radio is a very popular medium. The latest industry figures from RAJAR—Radio Joint Audience Research—indicate that more than 89% of UK adults, or almost 49 million people, still listen to radio each week. Although radio's popularity has been stable over recent years, radio is changing, and listeners' habits are changing too. Audience listening figures published by RAJAR a few months ago highlight the continued strong take-up of digital radio, which now accounts for 56.4% of all radio listening. A key driver has been the installation of digital radio in new cars. According to the Society of Motor Manufacturers and Traders, 93% of all new cars sold now have digital radio receivers as standard, up from less than 5% a decade ago, and more than a third of in-car listening is now on digital radio.

The radio and automotive industries expect the long-term shift to digital to continue. It has important implications for approximately 300 small community and commercial radio stations that are currently broadcasting on FM and AM frequencies but not on digital radio, owing to insufficient capacity available on the mainly county-sized local radio multiplexes, especially those serving urban areas. The costs of carriage on those local radio multiplexes can also be too high for some small local stations, while the coverage area that they provide may be too large for small stations in comparison with their own core FM/AM transmission areas.

Small stations recognise the risk that they will lose prominence with local audiences as digital radio becomes increasingly the default mode of listening, so they have lobbied strongly for an affordable route to broadcast via terrestrial digital radio. To address the issue and provide small stations with a viable route to broadcast on a digital platform, we supported the development of a brand-new approach to digital radio transmission, known as small-scale digital audio broadcasting.

Small-scale DAB is digital radio. It uses advancements in software and new transmission techniques to provide a flexible and cheap approach to digital transmission that performs well in localised geographical areas. With

funding provided by my Department, Ofcom successfully tested the viability of small-scale DAB technology in 10 technical trials in various locations around the country. However, the temporary licensing arrangements used for those trials was not appropriate for the long-term licensing of small-scale radio multiplexes.

The existing legislative framework set out in part II of the Broadcasting Act 1996 places a number of burdens on radio multiplex operators that are not necessary or appropriate for small-scale radio multiplex services. Crucially, it does not allow Ofcom to reserve capacity for the community radio stations or enforce restrictions on ownership, both of which are essential if smaller stations are to be on a fair playing field.

To address the issue, the Department for Digital, Culture, Media and Sport supported the private Member's Bill successfully taken through the House by my hon. Friend the Member for Torbay (Kevin Foster), which received cross-party support. That legislation, the Broadcasting (Radio Multiplex Services) Act 2017, amended the Communications Act 2003 to provide a power to modify through secondary legislation the rules for radio multiplex licensing set out in part II of the Broadcasting Act. I place on the record my thanks to my hon. Friend for his skill and energy in getting that legislation through the House.

Following that, we consulted the radio industry early last year on detailed proposals for a new, lighter-touch licensing framework and received 87 responses. We published our response to those responses last October. Overall, there was strong support for the proposals, but there were representations on whether we had got the balance right between protecting the legitimate interests of the community radio sector and allowing the commercial sector some involvement. We have reflected those points in drawing up the framework and have worked closely with Ofcom during the preparation.

The order seeks to protect the interests of community radio and small commercial stations, while ensuring that only the minimum necessary burdens are placed on organisations that want to operate a small-scale radio multiplex service. The order exercises powers under new section 258A of the 2003 Act to introduce a lighter-touch framework for licensing small-scale radio multiplex services. It also uses the pre-existing power under section 262 of the 2003 Act to provide for the creation of community digital sound programme services, known as C-DSPs.

The issue that attracted the most attention during the consultation was focused on who could hold a small-scale radio multiplex licence and the proposed limits to the number of those licences that could be held by one player. The Community Media Association wanted strict rules that limited licences just to not-for-profit entities and limited them to holding a single licence. However, we were concerned that that approach would exclude many of the existing operators of the successful small-scale trials. We think it important to have a mixed economy—for commercial entities to be involved and apply their skills and investment to develop small-scale DAB. None the less, we recognise that restrictions on ownership are necessary to avoid a potential concentration of ownership—that would undermine the ability of community radio—and to promote diversity of ownership of small-scale radio multiplex services. The provisions in the order seek to strike the right balance between those aims.

As part of the consultation, and following further discussions with the Competition and Markets Authority and Radiocentre, we have made a number of changes to the original proposals to strengthen the protections for community radio. The order ensures that the spectrum capacity reserved for community radio on a small-scale radio multiplex is a firm reservation. In other words, it must be maintained for use by community digital radio stations—C-DSP licence holders. The order requires Ofcom to place a condition in the licence that requires a small-scale radio multiplex licence holder to publish information about the carriage fees charged. Finally, the order requires Ofcom, when awarding a small-scale radio multiplex licence, to consider the extent of involvement of community radio in a particular application.

In addition to those measures, the order sets out the detailed framework that will allow Ofcom to license small-scale radio multiplex services.

Nigel Mills (Amber Valley) (Con): I look forward to hearing the excellent Amber Sound if it gets to move on to DAB in the future. Can the Minister confirm that the restrictions on ownership will apply not just at the start of a licence but throughout, so that if someone tried to consolidate and produce some sort of national or regional network via the back door, that would invalidate their licences and those would be freed up again for community radio stations, so that we do not end up with what has happened on the FM or existing networks when what we thought were regional stations had become a national one by the back door?

Margot James: I thank my hon. Friend for raising a very valid point. A duty will be placed on Ofcom to ensure that what he fears cannot come about. There is quite a complex array of conditions. For example, no station can own more than 20% of the entire number of licences that are issued under the new format. I think that my hon. Friend will be reassured by the various measures that we have in place to ensure that a concentration of ownership and a national channel by the back door do not come about. I will go through a few of those restrictions and conditions.

We will require Ofcom to reserve capacity on small-scale radio multiplexes for community digital radio stations. A minimum of three slots must be available, with a variable upper limit set by Ofcom based on its assessment of local need. We will create a new community digital sound programme category of licence for community stations broadcasting on digital; C-DSP licensees will need to commit to the same social value requirements that apply to existing community stations.

We will restrict the total number of small-scale radio multiplex licences that one company can hold at any time; I hope that that allays my hon. Friend's concerns. We will also place restrictions on the number of small-scale radio multiplex licences that existing national operators can be involved with, and require them to exercise their involvement in consortium with other partners.

We will give Ofcom the flexibility to determine the size of small-scale multiplexes, but with a policy target to set a maximum based on 40% of the population served by any overlapping local radio multiplex. If there is no overlapping multiplex, the draft order sets a limit of 7,500 sq km.

The draft order contains a small but important provision in relation to community radio licensing. Community radio has been a major success, with more than 280 services on air. The licence terms for the first stations launched in 2005 are due to expire in 2020. We want community stations to continue to focus on what they are doing well—serving their local communities—rather than be concerned about the renewal of licences at a time when they will need to think about digital radio carriage on new small-scale multiplexes. The order will therefore allow for a further extension of analogue community radio licences for a fourth five-year term, bringing the maximum total up to 20 years. That will avoid the need for Ofcom to re-advertise the first wave of community radio licences, which it would have needed to do later this year.

We believe that small-scale DAB has the potential to revolutionise community radio in the UK, and radio overall. The draft order will facilitate a more appropriate structure of licensing and will provide an opportunity for the 300 existing community radio stations—such as Black Country Radio, which is owned by a community interest company in my constituency of Stourbridge—and for small commercial radio stations, as well as for new entrants. The extensive technical trials have demonstrated that small-scale DAB provides a low-cost and viable option for smaller stations to broadcast on a terrestrial digital platform. I commend the draft order to the Committee.

9.8 am

Kevin Brennan (Cardiff West) (Lab): Good morning, everybody. It is a pleasure to serve under your chairmanship, Mr Robertson.

I thank the Minister for her comprehensive explanation of the draft order. She said that there had been extensive consultation about it; she mentioned the Community Media Association and Radiocentre. In fairness to Radiocentre, it tends to represent the larger commercial interests, but it does take an interest in community radio. However, there remain concerns about the order's proposals among smaller parts of the industry, such as those represented by the Community Media Association. As the Minister says, the draft order gives effect to the private Member's Bill introduced by the hon. Member for Torbay (Kevin Foster), who has now moved on to higher things.

The Local Radio Group, which the Minister did not mention, is another organisation that takes a strong interest in the development of radio in this country. It has expressed quite a lot of concern about the concentration of ownership in local radio, which is becoming almost national radio by proxy because of the changes and deregulation that have gone on recently. Understandably, it has concerns that the measure should not be used—as the hon. Member for Amber Valley suggested it might be—to allow larger entities to get control of community radio. It has raised a number of issues that I would like to put to the Minister, along with the Community Media Association's concerns. I have also received representations on one specific concern from one part of the country.

The Local Radio group says that with the loss of so many local radio stations and with the demise of local newspapers, the options for local small and medium-sized

[Kevin Brennan]

enterprises to advertise has been drastically reduced. However, the order says that the £15,000 annual limit which is placed on advertising on these community radio stations should be increased in order to allow more opportunities for local advertising or perhaps removed altogether. What consideration did the Minister give to that point in preparing the order, and has the strict £15,000 limit been retained in the order, as it is hoped that the stations which are currently on FM or AM might move towards digital?

The Local Radio Group also believes that the larger players should be prevented from applying for the new multiplexes. Will she confirm whether the large players, such as Global and Bauer which dominate the radio market—what was once the local radio market in the UK—will be able to apply for some of the new multiplexes? Will commercial groups be prevented from hoovering up these multiplexes under these regulations? What does she think this market is likely to look like in five years' time? I presume the policy objective is to keep community radio on a community basis. What will the market look like as a result of the order?

The Local Radio Group also thinks that any new small-scale DAB stations should be given a large enough area of coverage to be viable. Is she confident that that is the case with this order? It is also concerned about the pricing provisions in the order. It says that the operators should operate in an honest and open manner and that prices should be published on their websites. During the trial, the biggest issue for station owners has been inconsistent pricing. The criteria for pricing ban lack of communication and acting as a gatekeeper protecting their own interests. Will there be sufficient transparency around pricing to allow genuine community players to participate in this market?

Roughly half of regular listeners still listen to radio on FM. The Minister pointed out that 50% listen digitally. This initiative will not serve those listeners. The Local Radio Group feels that the FM radio landscape also needs to be reviewed in the light of recent deregulation and the subsequent consolidation on a large scale. Even though digital radio figures are going up all the time, the group feels it is remiss of the regulator, Ofcom, to under-serve 50% of consumers on FM—a medium that it regulates. Does the Minister have any further plans to look again at what is happening with FM in the light of these representations? I know from recent debates that she is aware of them.

The Minister also mentioned the Community Media Association. The submission from Radio Centre, which represents the larger commercial interests, said that the order was supported by the Community Media Association, which has been around since 1983. It is a non-profit organisation, not a commercial one, representing the interests of community radio. It has also raised a number of concerns. It welcomes the development of the SSDABs as an opportunity for community radio to gain carriage on the DAB platform. However, it says that it is disappointed with the Government for not taking on board several substantive proposals from the Community Radio Centre which, when taken together, would have increased the likelihood that more community services would take up this opportunity and bring greater public value in terms of local media pluralism. Will the Minister

comment on some of those concerns? Particularly on ownership, the CMA is concerned that, on its own, a 20% restriction on ownership of all SSDAB licences, which the Minister mentioned during the course of her remarks, will encourage acquisitions, and licence ownership will inevitably concentrate down into a small number of dominant groups of commercial SSDAB providers.

Given what has happened in the FM sector and with local radio, it is understandable that the CMA expresses concern. It thinks that there should be an additional limitation on total coverage of 20%, to help to provide some mitigation against the cherry-picking by commercial SSDAB providers of major urban areas, leaving more marginal areas less likely to have a viable SSDAB multiplex established and also unlikely to benefit from any cross-subsidy that might otherwise arise as a benefit of multiple ownership. Will the Minister comment on the CMA's concerns on ownership and why she and the Government chose to reject the CMA's recommendation to limit ownership of multiplex licences to single entities in order to develop a genuine plurality of media ownership and to provide a robust broadcasting ecosystem that would be better able to survive the vicissitudes of market circumstances?

In addition, the CMA expressed concern about public value in relation to these proposals. It believes that weighting should be given to proposals to operate SSDAB services that include provision to reinvest any surplus to reduce cost or to give other support to community digital sound programme services, to assist in the delivery of social gain—a policy objective that the Government said in the explanatory memorandum was a reason for introducing the draft order. In other words, it would bring benefit to the community, rather than simply operating primarily for commercial reasons.

The CMA says that its reasoning on this is informed by precedent—the provisions of paragraph 5 of the schedule to the Local Digital Television Programme Services Order 2012. Given the Government's proposals for the new platform, the CMA believes that public value would have been better achieved by encouraging, through the licence system and award process, the emergence of non-profit SSDAB multiplex operators in as many locations as possible, and that those should be given priority. Will the Minister comment on that, and also on the CMA's proposal that offering free carriage to community radio services, or distributing profits to support the creation of local community media content, would have been a better way forward to ensure public value?

As a natural consequence of that, the CMA goes on to talk about affordable carriage. It is concerned that the local ownership proposals are likely to lead to commercial, for-profit multiplex operators seeking to select the most attractive urban coverage footprints, to extract rental value from SSDAB licences without any commitment to return that value to the local communities—cherry-picking for profit, rather than developing proper, local community services. What can the Minister say on that concern? Why were these concerns not taken on board? There is sometimes a feeling out there that only the big commercial operators are listened to by Ofcom and Ministers in relation to radio. Does the Minister recognise that charge? If not, why has she not taken on board those sorts of proposals from the CMA?

The CMA is also concerned with the provisions that deal with the rules on the sources of funding for community digital sound programme services. I know that the Government's policy intention is to prevent licensees benefiting from the £15,000 fixed revenue allowance twice; in other words, that they should not be allowed to be just a current AM and FM service and then get another £15,000 for operating a DAB service. I understand that policy objective. However, the CMA believes that that is fundamentally unfair to the affected community radio services that already face severe restrictions on their advertising and sponsorship revenue. It thinks that these services will be deterred from applying for inclusion in the SSDAB multiplex, because doing so would incur additional costs arising from carriage fees, contribution circuit costs and contracting, and they would not get any additional revenue centre, because they are not allowed to extend beyond the £15,000 fixed revenue allowance limit. In addition, the CMA feels that it would leave them economically disadvantaged in relation to C-DSP-only services on the same SSDAB multiplex.

The Community Media Association requested that the Department should use the opportunity afforded by this order to remove the additional commercial restrictions on community radio stations to operate a service that overlaps with any local commercial radio service serving a potential audience of fewer than 150,000 adults. Does the Minister acknowledge that the economic situation for community radio stations has become increasingly difficult in the past decade? Does she agree that, as far as possible, a more level playing field should be created between simulcast community radio services and stand-alone C-DSP services?

In addition, the CMA has expressed concern about the size of the community radio fund, which is mentioned in the Government's explanatory memorandum to this order. It is currently at £400,000, but the Community Media Association says that is insufficient for nearly 290 broadcasting community radio stations. Should the Government meet their policy objective in this order, there is potential for many more community radio stations to join the SSDAB platform under a C-DSP licence. The CMA says it is clear that substantial investment will be needed in the fund in order to deliver tangible social benefits for stations, particularly those that wish to broadcast on analogue and digital. That is the intention of the fund.

According to the Communications Market Report 2019, the average annual income of community radio stations has fallen again and is now around £49,000. It has consistently fallen year on year. In 2008, it was about £84,000 per station—these are nominal, not real, figures, so there has been a nominal and real fall in income. If we adjust that for inflation, it amounts to about £115,000 today. That is a cut of a third from revenues just a decade ago.

The community radio fund cannot be deemed adequate to support the sector, and the CMA believes that a substantial increase in the fund is required. Is the Minister considering that, and does she accept that community radio has been put under a great deal of additional pressure in the past decade? Given that community radio makes a significant contribution to the Government's social and developmental objectives, should they not consider further support for the sector?

Finally, I want to mention a local issue on which I have received representations. Leicester Community Radio, which is a not-for-profit community interest company, has written to me to express its concerns about the provisions in paragraph 7 of the order, which in effect extends all community radio licences to 20 years by giving an extension, to which the Minister referred. Leicester Community Radio is concerned that the order denies similar groups the opportunity to bid for FM licences, because it will be automatically extended for current players in the market. In allowing for the automatic extension, did the Minister consider the needs of other community radio stations in the area that might wish also to apply and have perhaps been planning for some time to apply for an analogue licence the next time it becomes available? I did not see an impact statement for this particular order—indeed, I know that the Government have not prepared one because it will have a small impact on businesses, but that is an impact on a community business or a community interest company, and I wonder whether she has received any other representations of that kind and whether she could explain to Leicester Community Radio why she thinks that the provision, which will deny them the opportunity to apply next time for their licence, is necessary.

9.25 am

Margot James: I thank the shadow Minister for his forensic analysis of the regulations. He asks many good questions; I will do my best to answer them here and now, but if he feels toward the end of my summary that there are some burning issues outstanding, no doubt he will intervene, and I will then write to him on any other matters that require further explanation.

The hon. Gentleman has been through the consultation, to which we received 70 very detailed responses. We have assessed all those responses. He asked for my vision of how this will look in 10 years' time; we have tried to strike a balance between the need for commercial investment, knowledge and know-how into the radio sector as we move toward majority digital listening, and the absolute protection of the opportunities for genuine community radio stations, so that they are not priced out of business or consolidated to form, in effect, a national chain.

I share the hon. Gentleman's view that that is the tension. We have done our best to strike the right balance. I will go through some of the points he raised in more detail. Reinforcing these regulations is the fact that Ofcom completed its localness review and developed new localness guidance at the end of last year, to ensure that in any consolidation of radio stations there must be strong local reporting, local news and other local content to all stations, regardless of ownership. We are seeking to protect localness not simply through the ownership structures but through regulations.

We have a great number of restrictions, which I will go through. Returning to the vision for the future, the other important element is that we want radio to continue to grow, to be dynamic and to meet the needs of not only local populations but diverse populations. There is endless capacity, with the digital revolution in radio, for radio stations to be set up to serve niche interest groups as well as localities, and we want to see that dynamism flourish. That is what is behind these regulations.

[Margot James]

The hon. Gentleman is right that the digital figures are going up, but they are still only just more than 50%, so we need to look after the rest of radio. My Department and I announced two months ago that we would undertake a review of radio overall, which will look at analogue services as well as the future of digital radio.

We intend to apply protections to the licences that Ofcom will provide. We will limit any company to a maximum of 20% of all licences that are available at any given time. We will limit the involvement of existing national operators. The hon. Gentleman asked about the likes of Bauer and Global; those types of national operators will only be able to hold a maximum 30% stake in a company holding the licence, and they will be limited to being involved in a maximum of six licences.

Local radio multiplex operators may hold a small-scale radio multiplex licence, except where the coverage area of that local radio multiplex overlaps with the coverage area of the small-scale radio multiplex service. The overlapping regulations are complex, but they are designed to prevent the creep of local stations into regional stations and ultimately under national ownership. Preventing small-scale radio multiplex licences from holding adjacent licences from the coverage overlap is significant within a single local radio multiplex area. We believe that it will prevent the build-up of regional licensees.

In terms of community radio, the hon. Gentleman asked about small-scale multiplex licences, and whether Ofcom should give additional weight to applicants promoting C-DSPs to return any surplus into the local community station sector. We think that the current position is reasonably clear. Ofcom has to consider the extent of involvement of community radio in a particular application when awarding small-scale radio multiplex licences. Specific requirements on multiplex operators to promote or invest in the sector have not really worked for local television.

The hon. Gentleman also asked about price transparency and whether we should charge C-DSPs at net cost. We considered that as part of the industry consultation, but we believe that the extensive protections that we have in place will ensure that the carriage costs for community radio services will be reasonable. The conditions and restrictions that we have put in place form a better approach than undertaking a complex price control structure, which would be difficult to enforce.

I think the hon. Gentleman asked about fixed-cost allowances—I cannot remember whether he did or not, to be honest. Ofcom has created a regime for community radio stations on a digital platform, comparable to the analogue stations set up under the original community radio order. He did ask about simulcast broadcast over FM and DAB services. That will be permitted and encouraged under Ofcom guidelines, and will be supported.

The hon. Gentleman also talked about the fall in income of radio stations and community radio stations. It is a diverse market. Some stations have flourished, in terms of not just the content that they provide but the income that they are building up and the number of

listeners that they reach. As I said at the beginning, it is important that we balance the need for investment and the profit motive with the community structure, because if the market becomes too fragmented and too oriented to not-for-profit, one might find that the picture that he paints of declining revenues persists.

Kevin Brennan: Will the Minister give way?

Margot James: Yes, I will gladly give way as I try to find my notes!

Kevin Brennan: Some in-flight refuelling required, I think. Can the Minister say anything about the £15,000 limit, and why the automatic extension of licences is being applied across the piece, preventing other community radio players from being able to apply for FM licences?

Margot James: To answer the second question first, we are undertaking a review of radio, into which I will happily incorporate his concerns. There is a scarcity of available FM, which is a key constraint, as I am sure the hon. Gentleman will accept. With regard to funding, in addition to the £15,000 limit, 50% on any income above the £15,000 would be permitted. That was changed in 2015. Any further relaxation would, we think, take community radio away from the not-for-profit model. We believe that there is a need for some restrictions, as well as demand for community radio, as seen by the demand in recent Ofcom licensing reviews.

The hon. Gentleman also asked about the community radio fund, which is at the moment £400,000. That has gone up in the last two years, and we will keep that figure under review. We recognise the need for the fund, but we do not envisage its being spread about all the stations. We want to give some mind to innovation, and to areas where there is a scarcity of supply of community radio. There are all sorts of criteria by which community stations can apply to the fund for resources, so it will not be equally spread over all the stations; not all of them will need it.

Unless the hon. Gentleman wishes me to write to him on any other points, I express my gratitude again for his scrutiny. We believe that the widespread development of small-scale radio multiplexes will result in huge collaboration between commercial and community radio to provide a more diverse mix of exciting new content for listeners. I believe that we have the constraints on the potential for too much national direction about right, but we will definitely keep that important matter under review. I commend the draft order to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Small-scale Radio Multiplex and Community Digital Radio Order 2019.

9.35 am

Committee rose.