

2012 No. 2690

BROADCASTING

The Community Radio (Guernsey) Order 2012

Made - - - - *7th November 2012*

Coming into force - - *5th December 2012*

At the Court at Buckingham Palace, the 7th day of November 2012

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 262(1), (3) and (4) of the Communications Act 2003(a), as extended to the Bailiwick of Guernsey(b), by and with the advice of Her Privy Council, makes the following order:

The community radio services to which this Order in Council applies are, or are to be, provided primarily for the good of members of the public or of a particular community, rather than for commercial reasons. The appropriate authority of Guernsey considers that the provision of services of that description would confer significant benefits on the public or on the communities for which they would be provided.

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Community Radio (Guernsey) Order 2012.
- (2) This Order comes into force on 5th December 2012.
- (3) This Order extends to the Bailiwick of Guernsey.

Interpretation

- 2.—(1) In this Order—
“the 1990 Act” means the Broadcasting Act 1990(c), as extended to the Bailiwick of Guernsey(d);

(a) 2003 c. 21.
(b) Section 262 of the Communications Act 2003 was extended to the Bailiwick of Guernsey by article 6 of, and paragraph 50 of Schedule 2 to, the Communications (Bailiwick of Guernsey) Order 2003, S.I. 2003/3195, as amended by S.I. 2004/1116 and S.I. 2012/2688. There have been further amendments to S.I. 2003/3195 which are not relevant to this Order.
(c) 1990 c. 42.
(d) The Broadcasting Act 1990 was extended, in part and with modifications, to the Bailiwick of Guernsey by the Broadcasting Act 1990 (Guernsey) Order 1991, S.I. 1991/191 and by the Broadcasting Act 1990 (Guernsey) (No. 2) Order 1991, S.I. 1991/1709, as amended by S.I. 1999/1314 and S.I. 2003/3192. There have been further amendments to S.I. 1991/1709 which are not relevant to this Order.

“the 2003 Act” means the Communications Act 2003, as extended to the Bailiwick of Guernsey^(a);

“community” means—

- (a) the persons who live or work or undergo education or training in a particular Island of the Bailiwick of Guernsey or an area or locality therein, or
- (b) persons who (whether or not they fall within paragraph (a)) have one or more interests or characteristics in common;

“community radio licence” means a licence under Part 3 of the 1990 Act (as it has effect by virtue of this Order) to provide a community radio service;

“community radio service” means a local service having the characteristics set out in article 3;

“Island” means Guernsey, Alderney or Sark;

“local service”, “national service” and “restricted service” each has the meaning given in section 245(4) of the 2003 Act;

“social enterprise” means a business which has as its primary objective the support of one or more projects of a social nature (rather than the production of a financial profit); and

“social gain” has the meaning given by paragraph (2).

(2) In relation to a community radio service, “social gain” means the achievement, in respect of individuals or groups of individuals in the community that the service is intended to serve, or in respect of other members of the public, of the following objectives—

- (a) the provision of sound broadcasting services to individuals who are otherwise underserved by such services,
- (b) the facilitation of discussion and the expression of opinion,
- (c) the provision (whether by means of programmes included in the service or otherwise) of education or training to individuals not employed by the person providing the service, and
- (d) the better understanding of the particular community and the strengthening of links within it,

and may also include the achievement of other objectives of a social nature and, in particular, those mentioned in paragraph (3).

(3) Those objectives are—

- (a) the delivery of services of a social nature and the increasing, and wider dissemination, of knowledge about those services and about local amenities;
- (b) the promotion of economic development and of social enterprises;
- (c) the promotion of employment;
- (d) the provision of opportunities for the gaining of work experience;
- (e) the promotion of social inclusion;
- (f) the promotion of cultural and linguistic diversity;
- (g) the promotion of civic participation and volunteering.

(4) In this Order, in relation to any service which is intended to serve more than one community, any reference to the community which that service is intended to serve shall be taken to include a reference to every such community.

(5) In this Order, one person shall be treated as being connected with another person if he or she would be so treated for the purposes of Schedule 2 to the 1990 Act^(b).

(a) The Communications Act 2003 was extended, in part and with modifications, to the Bailiwick of Guernsey by the Communications (Bailiwick of Guernsey) Order 2003, S.I. 2003/3195, as amended by S.I. 2004/1116 and S.I. 2012/2688. There have been further amendments to S.I. 2003/3195 which are not relevant to this Order.

(b) Paragraph 3 of Part 1 of Schedule 2 to the Broadcasting Act 1990 sets out which persons are to be treated as being connected with a particular person, for the purposes of that Schedule. This paragraph was substituted by section 73 of, and paragraph 3, Part 1, of Schedule 2 to, the Broadcasting Act 1996 (1996 c.55), as extended to Guernsey by the Broadcasting (Guernsey) Order 2003, S.I. 2003/3192.

Characteristics of community radio services

3.—(1) It is a characteristic of community radio services that they are local services provided primarily—

- (a) for the good of members of the public, or of particular communities, and
- (b) in order to deliver social gain,

rather than primarily for commercial reasons or for the financial or other material gain of the individuals involved in providing the service.

(2) It is a characteristic of every community radio service that it is intended primarily to serve one or more communities (whether or not it also serves other members of the public).

(3) It is a characteristic of every community radio service that the person providing the service—

- (a) does not do so in order to make a financial profit by so doing, and
- (b) uses any profit that is produced in the provision of the service wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve.

(4) It is a characteristic of every community radio service that members of the community it is intended to serve are given opportunities to participate in the operation and management of the service.

(5) It is a characteristic of every community radio service that, in respect of the provision of that service, the person providing the service is accountable to the community that the service is intended to serve.

Application of broadcasting legislation

4. The provisions of the 1990 Act and the 2003 Act have effect in relation to a community radio service in the Bailiwick of Guernsey with the modifications set out in the Schedule.

Disqualified persons

5.—(1) In addition to the modifications made under article 4 of, and the Schedule to, this Order, Part 2 of Schedule 2 to the 1990 Act^(a) has effect in relation to community radio licences as if the persons who are disqualified persons by virtue of that Part of that Schedule included, in relation to such licences, any person falling within paragraph (2).

(2) Those persons are—

- (a) any person who is not a body corporate;
- (b) any body corporate falling within paragraph (3); and

(a) In Part 2 of Schedule 2 to the Broadcasting Act 1990, paragraph 1(1) was amended by section 73 of, and paragraph 6(1) and (2), Part 2, of Schedule 2 to, the Broadcasting Act 1996, as extended by S.I. 2003/3192, and by section 360(3) of, and paragraph 69(1), (4) and (5), Part 1, of Schedule 15 to, the Communications Act 2003 and was repealed in part by sections 348(1) and 406(7) of, and Schedule 19(1) to, the Communications Act 2003. Paragraph 1(2) and (3) were repealed by section 406(7) of, and Schedule 19(1) to, the Communications Act 2003. Paragraph 2 was amended by section 348(2) and (3) of the Communications Act 2003. Paragraph 3(1) was amended by section 73 of, and paragraph 7, Part 2, of Schedule 2 to, the Broadcasting Act 1996 (as extended by S.I. 2003/3192) and by section 360(3) of, and paragraph 69(1) and (6), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 4(1) was amended by section 360(3) of, and paragraph 69(1), (4) and (7), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 4(2) was amended by sections 348(4) and 360(3) of, and paragraph 69(1) and (8), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 5 was repealed in part by sections 73 and 148(2) of, and paragraph 8, Part 2, of Schedule 2 and Part 1 of Schedule 11 to, the Broadcasting Act 1996 (as extended by S.I. 2003/3192) and was amended by section 360(3) of, and paragraph 69(1) and (4), Part 1, of Schedule 15 to, the Communications Act 2003. Paragraph 5A was inserted by section 73 of, and paragraph 9, Part 2, of Schedule 2 to, the Broadcasting Act 1996 (as extended by S.I. 2003/3192) and was repealed in part by sections 360(3) and 406(7) of, and paragraph 69(1), (9)(a), (b) and (c), Part 1, of Schedule 15 and by Schedule 19(1) to the Communications Act 2003. Paragraph 6 was amended by section 360(3) of, and paragraph 69(1) and (4), Part 1, of Schedule 15 to, the Communications Act 2003.

- (c) any C4 company or S4C company that would not otherwise be a disqualified person by virtue of paragraph (3).
- (3) A body corporate falls within this paragraph if—
 - (a) that body holds at least one relevant Broadcasting Act licence; or
 - (b) that body is connected with a person who holds one or more such licences.
- (4) In this article, a relevant Broadcasting Act licence is a Broadcasting Act licence which is not a licence to provide one of the following services—
 - (a) a community radio service;
 - (b) a digital sound programme service;
 - (c) a restricted service;
 - (d) a radio licensable content service;
 - (e) a restricted television service;
 - (f) a television licensable content service.

Restrictions on holding of community radio licences

- 6.—(1) No body corporate may hold more than one community radio licence at any one time.
- (2) For the purposes of this article, any body corporate which is connected with another such body which holds such a licence is treated as if it also were a holder of that licence.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Article 4

MODIFICATION OF LEGISLATION IN RELATION TO COMMUNITY RADIO SERVICES

PART 1

Modifications to the Broadcasting Act 1990

1. The modifications to the Broadcasting Act 1990 referred to in article 4 are the modifications set out in this Part.

Licences

2. Section 86(3)(a) (which makes provision as to the duration of certain licences) has effect as if, for the words “local or national service or to provide an additional service”, there were substituted the words “community radio service”, and as if, for the word “twelve”, there was substituted the word “five”.

(a) Section 86(3) was substituted by the Communications Act 2003, section 252(2).

Applications for licences

3. Section 104(a) (which makes provision as to the giving of notice of proposals to grant licences, and as to the content of applications) shall have effect as if—

- (a) in subsection (1), for the word “local” there were substituted the words “community radio”, and in paragraph (b) of that subsection, for the words from “the area” to the end, there were substituted the words “any areas or localities in the Bailiwick of Guernsey in relation to which no applications may be made”;
- (b) in subsection (2)(b)—
 - (i) in sub-paragraph (i), for the words “living in the area or locality for which it would be provided” there were substituted the words “comprising the relevant community”, and the word “and” following that sub-paragraph were omitted;
 - (ii) in sub-paragraph (ii), for the words “living in that area or locality;” there were substituted the words “comprising that community;” and
 - (iii) after sub-paragraph (ii), there was added—
 - “(iii) broaden the range of local services provided in the area or locality of the Bailiwick of Guernsey in which the proposed service would be provided, and
 - (iv) be of a nature or have a content distinct from that of any other local service in the area or locality of the Bailiwick of Guernsey in which the proposed service would be provided;”;
- (c) after subsection (2)(b), there were added—
 - “(ba) evidence that the provision of the service would result in the delivery of significant social gain to the public or the relevant community;”;
- (d) in subsection (2)(c)—
 - (i) in sub-paragraph (i), after the words “projected financial position”, there were added the words “(with regard, in particular, to the number and nature of any persons from whom the applicant proposes to receive the income required to provide the proposed service and the proportion of that income that the applicant proposes to receive from each of those persons)”; and
 - (ii) in sub-paragraph (ii), after the word “service”, there was added—
 - “, and
 - (iii) as to the effect that the provision of the service would be likely to have on the economic viability of any other local service”;
- (e) in subsection (3) after the words “subsection (2)(b)”, there was added “, (ba)”; and
- (f) in subsection (4)—
 - (i) after “(2)(b)” there were added the words “or (ba)”, and
 - (ii) for the word “local” there were substituted the words “community radio”.

Renewal of local licences and special application procedure

4. Section 104B(b) (special application procedure) does not have effect.

Grant of licences

5.—(1) Section 105(c) (which makes provision as to the matters to which OFCOM are required to have regard in determining whether, and to whom, to grant local licences) has effect as if the

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- (a) Section 104 was amended by section 360(3) of, and paragraph 45, Part 1, of Schedule 15 to the Communications Act 2003. Subsections (5) and (6)(a) were repealed by sections 94(2) and 148(2) of, and Part 1 of Schedule 11 to, the Broadcasting Act 1996, as extended by S.I. 2003/3192.
 - (b) Section 104B was inserted by section 94(1) of the Broadcasting Act 1996, as extended by S.I. 2003/3192.
 - (c) Section 105 was amended by section 360(3) of, and paragraph 48, Part 1, of Schedule 15 to, the Communications Act 2003.

provision made by that section were re-numbered as subsection (1) of that section, and as if, in that provision—

- (a) for the words “local licence” there were substituted the words “community radio licence”;
- (b) in paragraph (b), for the words from “living in the area or locality for which the service would be provided” there were substituted the words “comprising the relevant community”;
- (c) in paragraph (c)—
 - (i) for the word “for”, in the first place where it occurs, there was substituted the word “in”, and
 - (ii) for the words “cater for tastes” to the end there were substituted the words “be of a nature or have a content distinct from that of any other local service in the part of the Bailiwick of Guernsey in which the proposed service would be provided”;
- (d) the word “and” immediately before paragraph (d) was omitted, and after the word “service” in that paragraph there were added—
 - “(e) the extent to which the provision of any such proposed service would result in the delivery of social gain to the public or the relevant community;
 - (f) the provision that each of the applicants proposes to make in order to be accountable to the relevant community in respect of the provision of the proposed service; and
 - (g) the provision that each of the applicants proposes to make to allow for access by members of the relevant community to the facilities to be used for the provision of the service and for their training in the use of those facilities”.

(2) Also, that section has effect as if the following subsections were added at the end—

“(2) Where OFCOM have published a notice under section 104(1), in the case of a proposal of theirs to grant a licence to provide a community radio service, they shall, in determining—

- (a) whether, or to whom, to grant the licence in question, and
- (b) if they grant it, the terms on which it is granted,

have regard to the need to ensure that any service provided under that licence does not prejudice unduly the economic viability of any other local service, other than a community radio service.

(3) Without prejudice to the generality of subsection (2), a community radio licence may contain such conditions as appear to OFCOM to be appropriate for ensuring that the proportion of such of the relevant income for that licence as is attributable to any arrangements for—

- (a) the inclusion in the service provided under that licence of any remunerated advertisement, or
- (b) the sponsorship of any programmes included in that service,

does not, in any financial year of the licence holder, exceed such proportion of the total relevant income for that licence in that year as may be specified in those conditions.

(4) Any condition imposed by OFCOM pursuant to subsection (3) must specify such proportion of that total relevant income as appears to OFCOM to be likely to secure the result that—

- (a) the inclusion in the service provided under that licence of remunerated advertisements, and
- (b) the sponsorship of programmes included in that service,

do not prejudice unduly the economic viability of any other local service, other than a community radio service.

(5) In this section—

“relevant income”, in relation to any community radio licence, means any payment or other financial benefit (whether direct or indirect) attributable to the provision of the service under that licence which any relevant person has received, will receive or is or will be entitled to receive in the financial year in question;

“relevant person”, in relation to a community radio licence, means the holder of that licence and every person who is connected with that person; and

“remunerated advertisement”, in relation to a service provided under a community radio licence, means any advertisement included in that service for which any relevant person has received, will receive or is or will be entitled to receive, any payment or other financial benefit (whether direct or indirect) in consideration for so including it.

(6) Any reference in this section to sponsorship does not include a reference to any payment made, or other financial benefit (whether direct or indirect) conferred, by a person for purposes that are wholly or mainly philanthropic in nature.”.

Character and coverage of services

6. Section 106(a) (requirements as to character and coverage of national and local services) has effect as if—

- (a) in subsection (1), for the words “national or local” there were substituted the words “community radio”;
- (b) in subsection (1A)—
 - (i) in paragraph (b), for the words from “living in” to the end there were substituted the words “comprising the relevant community”;
 - (ii) paragraph (c) and the word “or” following it were omitted;
 - (iii) in paragraph (d), the words “, in the case of a local licence,” were omitted and for the words “living in that area or locality” there were substituted the words “comprising that community”; and
 - (iv) after paragraph (d), the following were added—
 - “(e) that the departure would not be prejudicial to the access by members of that community to the facilities used for the provision of the service and for training in the use of those facilities; or
 - (f) that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence.”;
- (c) in subsection (1B), for the word “local” there were substituted the words “community radio”, and after that subsection there were added—

“(1C) Without prejudice to the generality of subsection (1), a community radio licence shall include such conditions as appear to OFCOM to be appropriate for securing that the holder of the licence does not enter into, or remain subject to, any arrangement if an effect of that arrangement is to allow another holder of a Broadcasting Act licence or the BBC to exercise an undue influence over the nature and content of the programmes included in the service provided under that licence.

(1D) In subsection (1C), “arrangement” includes any agreement or arrangement with one or more other persons, whether or not it is, or is intended to be, legally enforceable.”;
- (d) for subsection (2), there was substituted the following subsection—

“(2) Without prejudice to the generality of the provisions in subsections (1) to (1D), a community radio licence shall include such conditions as OFCOM consider are appropriate

(a) Section 106(1) was amended by section 360(3) of, and paragraph 49, Part 1, of Schedule 15 to, the Communications Act 2003. The words from “, except” onwards in section 106(1) were repealed by section 312(1) and (2) and 406(7) of, and Schedule 19(1) to, the Communications Act 2003.

to ensure that the licence holder provides the service described in the application for that licence.”;

- (e) in subsection (4), for the word “local” there were substituted the words “community radio”;
- (f) in subsections (4), (5) and (6), for the words “locality for which”, wherever they occur, there were substituted the words “locality in which”; and
- (g) in subsection (7), for the word “local” there were substituted the words “community radio”, and for the words “living and working in the area or locality in question” there were substituted the words “comprising the relevant community”.

Consultation about change of character of services

7. Section 106ZA(a) (consultation about change of character of local services) has effect as if, in subsection (1)—

- (a) for the words “local licence” there were substituted the words “community radio licence”; and
- (b) for the words “paragraphs (b) to (d)” there were substituted the words “paragraphs (b), (d), (e) and (f)”.

Definitions applicable in Part 3

8. Section 126(b) (interpretation of Part 3) has effect as if—

- (a) after the definition of “cash bid” there were added—
 - ““community” means—
 - (a) the persons who live or work or undergo education or training in a particular Island of the Bailiwick of Guernsey or an area or locality therein, or
 - (b) persons who (whether or not they fall within paragraph (a)) have one or more interests or characteristics in common;“community radio licence” means a licence to provide a community radio service;
“community radio service” has the meaning given in article 2(1) of the Community Radio (Guernsey) Order 2012;”;
- (b) after the definition of “radio transfer date”, there were added—
 - ““relevant community” means, in relation to a community radio service, the community or communities which that service is intended to serve;”;and
- (c) after the definition of “simulcast radio service”, there were added—
 - ““social gain”, in relation to a community radio service, has the meaning given by article 2(2) of the Community Radio (Guernsey) Order 2012;”.

Disqualified persons

9.—(1) In Part 2 of Schedule 2 (persons who are disqualified from holding certain Broadcasting Act licences), paragraphs 1(1)(f) (individual who is an officer of a political body etc) and 3 (certain publicly-funded bodies) do not have effect.

(2) In paragraph 4 of that Part of that Schedule (persons disqualified on grounds that they are subject to undue influence), sub-paragraph (1)(a)(c) has effect as if for the words “relevant body”

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- (a) Section 106ZA was inserted by section 313 of the Communications Act 2003.
 - (b) Section 126 was amended by section 148(1) of, and paragraph 9, Part 1, of Schedule 10 to, the Broadcasting Act 1996, as extended by S.I. 2003/3192, and by sections 256(2) and (3) and 360(3) of, and paragraph 59, Part 1, of Schedule 15 to, the Communications Act 2003 and repealed in part by section 406(7) of, and Schedule 19(1) to, the Communications Act 2003.
 - (c) Paragraph 4(1) of Part 2 of Schedule 2 to the Broadcasting Act 1990 was amended by section 360(3) of, and paragraph 69(1), (4) and (7), Part 1, of Schedule 15 to, the Communications Act 2003.

there were substituted “person”, and sub-paragraph (2) (meaning of “relevant body”) were omitted.

PART 2

Modifications to the Communications Act 2003

10. The modifications to the Communications Act 2003 referred to in article 4 are the modifications set out in this Part.

Regulation by OFCOM of independent radio services

11. Section 245 has effect as if, in subsection (4)(b), after the words “Bailiwick of Guernsey;” the following paragraph was added—

“(ba) a service is a community radio service if it is a local service having the characteristics set out in article 3 of the Community Radio (Guernsey) Order 2012”.

Extension of existing licences

12. Chapter 3 of Part 3 has effect as if section 253 were omitted and before section 256 there were inserted—

“253A Extension of community radio licences

(1) A person who holds a community radio licence is entitled to apply to OFCOM, in accordance with the following provisions of this section, for one extension of that licence.

(2) The period for which a licence may be extended on such an application is a period ending not more than five years after the end of the period for which it was granted originally.

(3) An application under subsection (1) may only be made in the period which—

- (a) begins eighteen months before the date on which the licence would otherwise expire; and
- (b) ends six months before that date.

(4) An application under subsection (1)—

- (a) must be made in such manner,
- (b) must contain such information about the applicant, the applicant’s business and the service the applicant proposes to provide, and
- (c) must be accompanied by such fee (if any),

as OFCOM may determine.

(5) If, on an application for an extension under subsection (1), OFCOM are satisfied as to the matters mentioned in subsection (6), they shall modify the licence by extending the period for which the licence is to be in force by such period authorised by subsection (2) as they think fit.

(6) Those matters are—

- (a) the ability of the licence holder to maintain the service for the period of the extension; and
- (b) the likelihood of a contravention by the licence holder of a requirement imposed by a condition included in the licence by virtue of section 106 of the 1990 Act.”

Provisions that do not have effect

13. Sections 314 (character and content of services), 355 and 356 (variation of licences following change of control) do not have effect.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under section 262 of the Communications Act 2003 as extended to Guernsey (“the 2003 Act”), contains provision to create a special regulatory framework for a new category of radio broadcasting services in the Bailiwick of Guernsey, to be known as “community radio services”. The provision includes modifications to the Broadcasting Act 1990 as extended to Guernsey (“the 1990 Act”) and to the 2003 Act.

Article 2(1) defines a community radio service as a form of local sound broadcasting service having the characteristics set out in article 3.

The first such characteristic (article 3(1)(a)) is that all community radio services are provided primarily for the good of members of the public or of particular communities (a community being defined by article 2(1)) rather than primarily for commercial reasons. This is pursuant to the requirement in section 262(2)(a) of the 2003 Act.

Also, a service must be provided in order to deliver social gain (article 3(1)(b)). Social gain is defined in article 2 as the achievement of the four objectives set out in paragraph (2) of that article together with the achievement of any other objectives of a social nature, which may include those listed in paragraph (3).

Further characteristics of a community radio service are that it must be provided primarily to serve one or more communities (article 3(2)), it must be run on a not-for-profit or non profit-distributing basis (article 3(3)), that members of the community or communities that it is intended to serve are given opportunities to help run the service (article 3(4)), and that the provider of the service is accountable for its provision to the community or communities it is intended to serve (article 3(5)).

Article 6 places an ownership restriction on the holding of community radio licences, such that a body corporate may hold only one such licence.

The Schedule to the Order, introduced by article 4, sets out the modifications with which the provisions in the 1990 Act and the 2003 Act have effect in relation to community radio services.

Paragraph 2 modifies section 86(3) of the 1990 Act (which makes provision as to the duration of local radio licences) to provide for community radio licences to last for a maximum of five years.

Paragraph 3 modifies section 104 of the 1990 Act by adapting the existing requirements relating to the publication by OFCOM of proposals for new licences to provide services including local sound broadcasting services, and for applications for such licences. Paragraph 3(a), (b)(i) and (ii) and (f)(ii) makes modifications to reflect the fact that community radio services will be provided to serve specified communities rather than particular areas. Paragraph 3(b)(iii) and (c) adds to the list of matters that an application for a community radio licence must address. Paragraph 3(d)(i) and (ii) modifies the requirements relating to the information that OFCOM may require from the applicant.

Paragraph 4 states that section 104B of the 1990 Act, which provides for a special application procedure for some local radio licence applications, does not have effect in relation to community radio services.

Paragraph 5 modifies section 105 of the 1990 Act, which sets out special requirements relating to the grant of local licences. Paragraph 5(1)(a) to (c) makes modifications reflecting those made by paragraph 3(a), (b)(i) and (ii) and (f)(ii). The modifications also reflect the characteristics of a community radio service set out in article 3 (paragraph 5(1)(d)). Paragraph 5(2) inserts new subsections (2) to (6) into section 105. New subsections (2) to (5) impose requirements to ensure that the grant of a community radio licence does not unduly prejudice the economic viability of any other local sound broadcasting service. These requirements relate, in particular, to the proportion of income that any holder of a community radio licence may receive in respect of advertisements or sponsorship. Subsection (6) provides that the restrictions established by subsections (2) to (5) do not apply to sponsorship that is made available for purposes that are mainly philanthropic in nature.

Paragraph 6 modifies section 106 of the 1990 Act, which sets out requirements as to the character and coverage of national and local services. Paragraph 6(a), (b)(i) to (iii) and (e) to (g) make modifications similar to those made by paragraph 3(a), (b)(i) and (ii) and (f)(ii), whilst those made by paragraph 6(b)(iv) relate to characteristics of community radio services. Paragraph 6(c) inserts provision to secure that other broadcasters are not able to exercise an undue influence over the nature and content of community radio services, whilst paragraph 6(d) enables OFCOM to impose licence conditions to ensure that community radio licence holders provide the service that was proposed in the licence application.

Paragraph 7 modifies section 106ZA of the 1990 Act in consequence of the additional provisions inserted into section 106(1A) of the 1990 Act by paragraph 6(b)(iv).

Paragraph 8 modifies section 126 of the 1990 Act, which supplies various definitions for the purposes of Part 3 of that Act.

Paragraph 9 modifies Part 2 of Schedule 2 to the 1990 Act, which makes provision relating to restrictions on the holding of licences. In particular, paragraph 9(1) disapplies paragraph 3 of that Part of that Schedule, which would otherwise have the effect that community radio licence holders could receive no more than half their annual income from public funds. Paragraph 9(2) modifies paragraph 4 of the same Part so that a person will be treated as a disqualified person, in relation to a community radio licence, if it appears to OFCOM that any other person is exerting an influence over him that is, or would be, contrary to the public interest. In addition to the modifications made by paragraph 9, article 5 lists a number of additional persons who for the purposes of community radio licences should be considered to appear on the list of disqualified persons at Part 2 of Schedule 2.

Paragraph 11 makes a consequential modification to section 245 of the 2003 Act (which, amongst other things, defines certain kinds of radio service).

Paragraph 12 provides that section 253 of the 2003 Act (provisions about the extension and modification of existing local radio licences) does not have effect, and inserts a new section 253A which sets out the circumstances in which a person who holds a community radio licence may apply to OFCOM for an extension of that licence, as well as setting out the process by which such applications must be made.

Paragraph 13 disapplies sections 314, 355 and 356 of the 2003 Act (which make provision as to the character and content of local services and as to the variation of local licences after a change of control).

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