

# Regulation of community radio key commitments

Guidance on changes to key commitments and  
ensuring compliance

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## Section 1

# Background

## Introduction

- 1.1 This guidance sets out the procedures whereby Ofcom will consider changes to a community radio station's 'key commitments'. It also explains what measures Ofcom will use to ensure that community radio stations are complying with their key commitments.

## Licensing community radio services

- 1.2 Community radio services are licensed under the terms of three different pieces of legislation: the Community Radio Order 2004 (as amended by the Community Radio (Amendment) Orders 2010 and 2015), the Communications Act 2003 and the Broadcasting Act 1990 ('the legislation'). The legislation sets out requirements that must be met in order for radio services to qualify as 'community radio services', including that such services are non-profit-distributing, are provided for a target community, deliver social gain objectives, invite access and participation in the service, and are accountable to the target community.
- 1.3 Section 106(1) of the Broadcasting Act 1990 requires that community radio licences include such conditions as appear to Ofcom to be appropriate for securing that the character of the licensed service (as proposed by the licence holder when making its application) is maintained during the period for which the licence is in force.
- 1.4 The way section 106(1) applies in practice is that when a prospective licence holder applies for a community radio licence, it must set out its proposals as to the character of the service it intends to provide. Those proposals are summarised in what is known as a 'key commitments' document, which then forms the basis for the terms and conditions contained in the licence regarding the 'character of the service' and its delivery. Such terms and conditions are agreed with each licensee before the station starts broadcasting. (The 'licensee' is the organisation which holds the community radio licence.)
- 1.5 In July 2015 we published a consultation on a proposal to streamline and simplify how key commitments are recorded in community radio licences, and asked for views on this proposal. In March 2016 we decided to adopt a new policy, and published a statement.  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0010/51121/Review-of-the-approach-to-community-radio-Key-Commitments-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0010/51121/Review-of-the-approach-to-community-radio-Key-Commitments-statement.pdf)
- 1.6 As a result of the changes brought in as a result of our change in policy, for those Licensees that adopt the revised key commitments and for new licensees, the key commitments document include:
  - a description of the community to be served and the character of service (i.e. a short description of the station's aims);
  - a description of the programme service;
  - social gain objectives; access and participation arrangements; and mechanisms to ensure accountability to the target community; set out in general terms.

- 1.7 In determining the licence conditions that should be included in a licence under section 106(1) of the Broadcasting Act 1990, section 106(1A) provides that Ofcom may, in particular, include conditions that enable it to consent to a “departure from the character of a licensed service” (or, in other words, the key commitments) should a licence holder subsequently request such a change. Licence Condition 2(5), contained in Part 2 of the Schedule to each community radio licence, makes provision for subsequent changes to a licensee’s key commitments. Before Ofcom can give its consent it must be satisfied that one of a number of statutory criteria has been fulfilled (as set out in further detail below). However, the legislation also gives Ofcom discretion not to consent to a proposed change, even if one of these criteria is satisfied.

### Statutory criteria

- 1.8 The statutory criteria that Ofcom must apply when considering requests to change key commitments are set out in Section 106(1A) of the Broadcasting Act 1990 (as modified by the Community Radio Order 2004), and are as follows:
- that the departure would not substantially alter the character of the service (section 106(1A)(a));
  - that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community (section 106(1A)(b));
  - that, there is evidence that, among persons comprising that community, there is a significant demand for, or significant support for, the change that would result from the departure (section 106(1A)(d));
  - 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 (section 106(1A)(e)); or
  - that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence (section 106(1A)(f)).
- 1.9 Where Ofcom is considering whether or not to consent to a proposed change on the basis of sections 106(1A)(b), (d), (e) or (f) above, it is under a general obligation to consult with those who, in its opinion, are likely to be affected by the change.<sup>1</sup> Ofcom is not, however, required to consult when it is satisfied that a proposed change satisfies section 106(1A)(a) - i.e. that a proposed change would “not substantially alter the character of the service”. The term ‘character of the service’ is not defined in the legislation. We consider that it includes everything that is set out in each service’s key commitments section of its licence. For the avoidance of doubt, this goes beyond a sub-section in the key commitments document entitled ‘description of character of service’ to encompass the entirety of the key commitments annex to the licence.
- 1.10 In order to provide practical flexibility for both Ofcom and any licensee wishing to make changes, decisions on whether a proposed change is considered ‘substantial’ or not will be taken on a case-by-case basis.

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<sup>1</sup> Section 106ZA(1). This is, however, subject to section 106ZA(4), where Ofcom may not be required to consult at all, or for a shorter period than 28 days, in circumstances where a delay would be likely to prejudicially affect the interests of the licence holder.

- 1.11 If a proposed change is regarded as substantial, then a consultation will be conducted, and the change can be approved if it satisfies one of the remaining four statutory criteria.

### Additional Ofcom policy criteria

- 1.12 There are five policy criteria that Ofcom will take into account when considering whether or not to consent to proposed changes to a licence holder's key commitments. These are as follows:

- **Whether the proposed change conflicts with the community radio 'characteristics of service'** (see [Annex 2](#)) set out in the legislation. Ofcom considers that such a conflict would run counter to the legislation.
- **The time elapsed since the licence commenced.** We propose that a station should be operating under its agreed key commitments for at least one year before we will consider a change to key commitments.
- **The reason for the change.** It may be appropriate for us to take account of the kind of environment within which the station operates and that in the light of experience a station may need to adjust its commitments to better serve its target community.
- **The extent of the impact of the change on the character of the service.** A judgement will need to be made on the basis of the overall sound of the station, as well as whether the change is likely to affect the delivery of an appropriate service to the stated target community, and what effect the change will have on the delivery of off-air activity such as social gain objectives.
- **The avoidance of 'format creep'**<sup>2</sup>. We will be alert to the possibility that a series of small changes could result in a substantial alteration, and we will therefore take into account the effect of any proposed change in the context of previous changes.

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<sup>2</sup> The community radio 'key commitments' is the equivalent of the 'format' included in every commercial radio licence. The format outlines what the essential ethos of the radio service should be (the type of output, and/or the audience at which it is aimed), and details any specific expectations of that service (such as how much of the output should be produced and presented from within the area being served; what specific type(s) of music should be played; how much speech should be broadcast).

## Section 2

# The process for considering requests for changes to key commitments

- 2.1 Community radio stations can submit a request for changes using the key commitments change request form which is available on the Ofcom website<sup>3</sup>. The completed form should be sent to [community.radio@ofcom.org.uk](mailto:community.radio@ofcom.org.uk) or to the Community Radio team, Ofcom, Riverside House, 2a Southwark Bridge Road, London, SE1 9HA.
- 2.2 On receipt of a change request, Ofcom will consider it against the statutory criteria (paragraph 1.8) and the additional criteria (paragraph 1.12). The first consideration is whether a proposed change would substantially alter the character of service of the station. If Ofcom considers that this is the case, then the proposed change will need to be considered under the second, third, fourth or fifth statutory criterion (in paragraph 1.8) and a consultation will need to be carried out. At that point, Ofcom will seek confirmation from the applicant as to whether it wishes to proceed with the request (and, if so, whether it wishes to amend or replace its submission in the light of the necessity to make it public).
- 2.3 If a consultation on the proposed change is conducted, Ofcom will publish the requestor's change request form, and invite comments on the proposals under the legislative criteria. Ofcom is not required to publish any confidential information. The consultation period will (normally) last for four weeks<sup>4</sup>.
- 2.4 When the consultation has closed, a decision will be taken by Ofcom with reference to the responses to the consultation, the statutory criteria and its additional policy criteria. If a request is not considered to satisfy any of the statutory criteria, it cannot be approved. If a proposed change is regarded as substantial, then a consultation will be conducted, and the change may be approved if it satisfies one of the remaining four statutory criteria. However, as stated earlier, the legislation gives Ofcom discretion on whether or not to accept a proposed change, even if it satisfies one of the criteria.
- 2.5 The licensee will be informed of the outcome and decisions will then be published on the community radio section of Ofcom's website, and the appropriate changes, if any, made to the licence.

### 2.6 Data Protection

We require the information requested in the change request form in order to carry out our licensing duties under the Broadcasting Act 1990, Broadcasting Act 1996 and Communications Act 2003. Please see Ofcom's General Privacy Statement [www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement](http://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement) for further information about how Ofcom handles your personal information and your corresponding rights.

<sup>3</sup> <https://www.ofcom.org.uk/manage-your-licence/radio-broadcast-licensing/amend>

<sup>4</sup> As mentioned earlier, Ofcom's duty to consult is subject to section 106ZA(4). See footnote 3.

## Section 3

# Ensuring compliance with key commitments

- 3.1 This guidance also explains Ofcom's mechanisms and processes for ensuring that stations are delivering their key commitments and other licence obligations. These are detailed below, followed by an overview of the compliance process that we will follow if a station is not meeting its licence conditions.

## Record keeping and annual reporting

- 3.2 Community radio licensees are expected to keep on file a record of their activities in relation to the provision of their key commitments, including social gain, participation in the service and accountability. This will help make sure that the station can justify its activities by ensuring that it holds a complete record of the work it has undertaken towards the achievement of its licence obligations.
- 3.3 An annual finance report is required from each licensee, once they have been broadcasting for more than one year, to check whether stations are operating within the income limits set by the legislation and in their licence conditions. There is a pro forma for the financial report that is sent to licensees to complete and return to us. It includes information such as major sources of income and expenditure. A failure to adhere to the funding limits may be a breach of a licence condition.
- 3.4 To ensure that we continue to review the sector adequately in our annual *Communications Market Report*<sup>5</sup>, we also ask stations to provide us (as part of the financial report) with some key information such as the average number of original programming hours per week, the total number of volunteers involved during the year, the average number of volunteer hours per week as well as the number of people trained during the year.

## Complaints concerning broadcast output

- 3.5 All community radio licensees are required by their licence to adhere to the requirements of the *Broadcasting Code* <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/> and the Advertising Standards Authority BCAP Code. <https://www.cap.org.uk/Advertising-Codes/Broadcast.aspx>
- 3.6 Complaints about standards in programme output and fairness and privacy issues are dealt with in the same manner as for other broadcasters. In the first instance, complainants can contact the station concerned directly. If the complainant is not satisfied with the response or, alternatively, they wish to raise the matter with Ofcom directly, a complaint may be submitted via our website. <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint>

## Complaints concerning the delivery of key commitments

- 3.7 Any complaint about a station's failure to deliver its key commitments can also be made directly to the radio station concerned (contact details are on our website at

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<sup>5</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector/communications-market-reports>

<http://www.ofcom.org.uk/static/radiolicensing/html/radio-stations/community/community-main.htm>). Alternatively, a complaint may be made to Ofcom's Community Radio team ([community.radio@ofcom.org.uk](mailto:community.radio@ofcom.org.uk)). If, as a result, we find that there is potentially a problem, we will take up the matter with the station concerned (see compliance procedure outlined below).

## Compliance procedure

- 3.8 Providing the licensed service as set out in the key commitments is a condition of each station's licence. If Ofcom is concerned that a station may be failing to deliver any of the objectives in its key commitments, it will undertake an initial assessment of the possible licence breach. This will be done by following the procedures set out in our document *General procedures for investigating breaches of broadcast licences*. <https://www.ofcom.org.uk/consultations-and-statements/category-1/general-procedures>
- 3.9 Based on our initial assessment of the case, Ofcom will consider whether there may have been a breach of the station's key commitments. If not, Ofcom will not investigate further. If we consider there has been a potential breach of the key commitments, the case will move to an investigation.
- 3.10 Following the investigation, should the licensee be found in breach of its licence, details of the breach be published in Ofcom's *Broadcast and On Demand Bulletin*, and the breach will be recorded on the station's file. A licence breach may be taken into account should the licensee concerned apply for an extension to its current Broadcasting Act licence, or if another Broadcasting Act licence is applied for by the licence holder in future. *Broadcast and On Demand Bulletins* are on our website here: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>

## Sanctions

- 3.11 There may be occasions where Ofcom may consider imposing a statutory sanction on the licensee. The broadcasting legislation specifies what sanctions Ofcom may consider applying, and they include:
- directing a licensee to broadcast a statement of findings;
  - imposing financial penalties;
  - shortening the licence period;
  - suspending the licence; or
  - revoking the licence.
- 3.12 Further information is set out in a document *Procedures for the consideration of statutory sanctions in breaches of broadcast licences*, available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/71967/procedures\\_for\\_consideration.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/71967/procedures_for_consideration.pdf)



## Annex 1

# Key commitments change request form

<b>Community radio station name:</b>	
<b>Licence number:</b>	
<b>Licensee (company name):</b>	
<b>Contact name:</b>	
<b>Date of request:</b>	

### Details of requested change(s) to key commitments

A community radio operator may apply to Ofcom to have the station's key commitments amended.

Please complete the table overleaf by including your current commitment in the left hand column and your proposed revised commitment in the centre column. In the right hand column please give a brief explanation as to why you wish to make each change.

We also require you to complete a second table which asks you to explain your proposed changes with reference to the statutory framework.

If you do not provide an explanation for your proposed changes and a completed comparison table, Ofcom cannot consider a key commitments change.

Please complete this form and return it to: [community.radio@ofcom.org.uk](mailto:community.radio@ofcom.org.uk)

<b>Existing commitment (as in your published key commitments)</b> Please only include one commitment change per row, and add more rows as necessary into the table.	<b>Proposed revised/new key commitment</b>	<b>Reason for proposed change</b>

## Statutory requirements

Under section 106(1A)(a)-(f) of the Broadcasting Act 1990 (as amended and modified<sup>6</sup>) Ofcom must be satisfied that your proposed changes **meet at least one of the criteria referred to below**.

Please indicate which of these criteria you believe your proposed changes satisfy by deleting YES or NO as applicable, and provide an explanation for why you consider a particular criterion is met in the relevant box. You should note that even if Ofcom is of the opinion that your explanation of your proposed changes meets one or more of these criteria, there may still be reasons why Ofcom is unable to consent to the change. When explaining your proposed changes, it is not enough to state that you believe one of the criteria is met. You must also demonstrate *why* you consider that at least one of these criteria is met.

In particular, if Ofcom is not satisfied that the changes would not substantially alter the character of the service (criterion (a) below), Ofcom cannot consent to the change without consulting on your proposals.<sup>7</sup> If this is the case, we will contact you to confirm that you are happy for us to consult on your proposed changes, and whether you wish to make any changes to your request in light of the need to make it public.

As part of our consideration of your request to make changes to your key commitments, we require applicants to provide an explanation for **at least one** of the criteria below.

(a) In your judgement would the proposed changes substantially alter the character of the service?	YES/NO please explain why below
(b) Do you consider that the proposed changes would narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community?	YES/NO please explain why below
(c) Do you believe that there is evidence that, among persons comprising that community, there is a significant demand for, or significant support for, the changes that you have proposed?	YES/NO please explain why below
(d) Do you consider that your proposed changes would 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?	YES/NO please explain why below

<sup>6</sup> As amended by sections 312 and 313 of the Communications Act 2003 and modified by the Community Radio Order 2004

<sup>7</sup> Ofcom may approve a change under any of criteria (b), (c), (d) and (e) without consultation, or after a consultation of less than 28 days, if Ofcom considers that to hold a consultation at all, or for 28 days or more, would result in a delay that would be likely to prejudice the interests of the licensee. Ofcom may also remove for the purposes of consultation any confidential information submitted by the licensee.

(e) Do you consider that the proposed changes would be prejudicial to the delivery of social gain resulting from the provision of the service provided under your licence?	YES/NO please explain why below

<p><b>Please set out below any additional information and/or evidence you wish to provide in support of your proposed changes.</b></p> <p>In particular, you may wish to outline how you think your proposed change(s) fit(s) within Ofcom’s published guidance on changes to key commitments  <a href="https://www.ofcom.org.uk/data/assets/pdf_file/0017/31913/kc-changes-guidance.pdf">https://www.ofcom.org.uk/data/assets/pdf_file/0017/31913/kc-changes-guidance.pdf</a></p>

**Data Protection**

We require the information requested in this form in order to carry out our licensing duties under the Broadcasting Act 1990, Broadcasting Act 1996 and Communications Act 2003. Please see Ofcom’s General Privacy Statement [www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement](http://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement) for further information about how Ofcom handles your personal information and your corresponding rights.

Amended July 2013

## Annex 2

# Characteristics of community radio services

## Definition of community radio

A2.1 The Community Radio Order 2004 sets out five 'characteristics of community radio services'. These are reproduced in full below. Any change to key commitments must not be contrary to these characteristics.

*(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 makes himself accountable to the community that the service is intended to serve.*

A2.2 Definitions of some of the terms used are set out below. These have also come from the Community Radio Order 2004:

*"community" means -*

*(a) the persons who live or work or undergo education or training in a particular area or locality, or*

*(b) persons who (whether or not they fall within paragraph (a)) have one or more interests or characteristics in common;*

*"social gain" has the meaning given [below].*

*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 [below].*

*Those objectives are -*

- (a) the delivery of services provided by local authorities and other 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.*