



# Statement on commercial radio localness regulation

Statement

Publication date:

15 April 2010



# Contents

Section		Page
1	Executive summary	1
2	Introduction	5
3	Encouraging UK-wide services	8
4	Regulating for localness	20

Annex		Page
1	Revised localness guidelines	37
2	Revised format change policy	44
3	Consultation responses	47
4	Statutory duties and new legislation	65

## Section 1

# Executive summary

- 1.1 Changes in the advertising market, greater competition for audiences' attention and technological developments mean that the radio industry is facing significant challenges and is having to change. So the way it is regulated also needs to adapt.
- 1.2 Ofcom is taking a number of steps to de-regulate commercial radio while ensuring that stations continue to deliver programming that consumers and citizens value. This statement sets out our conclusions about the regulation of localness on commercial radio and the opportunities for more national stations.
- 1.3 We will shortly be consulting on changes to the Broadcasting Code rules governing sponsorship and commercial references on radio to allow greater flexibility, and we are also considering the future regulation of music formats and the small scale radio sector. These other potential changes are not covered in this statement. In addition, at the end of last year we recommended to the Secretary of State that the radio specific ownership rules could be removed, and the local cross media ownership rules simplified.
- 1.4 Ofcom's duties as regards radio are set out in legislation and include:
  - Promoting the interests of citizens and consumers;
  - Securing a range and diversity of local commercial radio services;
  - Ensuring, for each local station, an appropriate amount of local material with a suitable proportion of that material being locally made.
- 1.5 Our research shows that audiences continue to value local content on commercial radio: both for key information (local news, traffic & travel and weather) and for other local programming (such as local sport or community issues) that reflects local identities.
- 1.6 However, local programming can be expensive to produce. This cost has been difficult to bear for some commercial radio stations in recent times. Declining advertising revenue in the past few years has led to uncertain viability for many local stations, particularly smaller ones.
- 1.7 The main challenge for regulation is to ensure, as far as possible, that all UK listeners are served by one or more commercial radio stations providing local programming, in such a way that allows the radio industry to remain financially viable.
- 1.8 The Government's *Digital Britain Final Report* in June 2009 signalled the intention to introduce legislation to change Ofcom's duties and powers with respect to the regulation of localness on radio. In July 2009 we published a consultation (*Radio: the implications of Digital Britain for localness regulation*<sup>1</sup>), which proposed how we should change regulation to address the current challenges.

---

<sup>1</sup> Available at <http://www.ofcom.org.uk/consult/condocs/radio/>

- 1.9 Some of the proposals we made required legislative changes; Parliament has now debated those changes proposed by Government, and these became law as part of the Digital Economy Act 2010.
- 1.10 This Act makes provisions for a possible future Digital Upgrade for national and local stations, under which they would stop broadcasting on the analogue platforms of FM and AM and broadcast only on digital platforms. Digital-only stations are currently less regulated than FM and AM stations, which face statutory regulation of localness and formats. So, without further legislation, the process of Digital Upgrade establishes a 'glide path' towards a more lightly regulated radio sector as the proportion of digital listening increases. As a first step along this 'glide path', the Act allows Ofcom to reduce significantly the burden of localness regulation for analogue stations.
- 1.11 This statement, then, sets out our policy decisions on regulating for localness following the proposals we made in the July 2009 consultation, responses we received to that consultation and the changes introduced by the Digital Economy Act 2010. It is important to note that Ofcom does not have the power to implement these changes until the relevant provisions of the Act come into effect on 8 June 2010. For simplicity, we will therefore implement all of the provisions and policies in this statement from that date.
- 1.12 The deregulatory changes set out in this statement will allow stations greater flexibility and a greater prospect of viability through cost savings, making the delivery of local content more sustainable and benefitting the citizens and consumers who value this content.
- 1.13 In our July 2009 consultation, the proposed changes to localness regulation on commercial radio were discussed in the context of the three-tier structure set out as a strategic goal in the Digital Britain Final Report, namely:
- At a UK-wide level, facilitating the creation of new commercial radio stations to create an improved consumer proposition: a wide range of popular and niche services, delivered digitally.
  - At a local level, helping ensure the survival of a viable tier of commercial services, large enough and sufficiently well resourced to provide local news and other content in every part of the UK. This would also allow for the creation of nation-specific services for each of Scotland and Wales, while Northern Ireland in effect already has its own nation-specific commercial service in Downtown Radio.
  - At the smallest scale, building on the success of the not-for profit community radio sector, but also allowing for the survival of commercial models where these are viable.
- 1.14 The changes to localness regulation set out in this statement are all based on existing analogue local services regulation, and so would apply to current simulcasts of analogue services on DAB. If Parliament desires to protect local content on digital platforms post-Digital Upgrade, this would require new legislation.
- 1.15 We have considered whether, under the new Act, we could go further than our consultation proposed in reducing localness regulation. As we indicate above, Ofcom has a number of statutory duties in relation to the regulation of radio, including to secure a range and diversity of local commercial radio services and to ensure that local programming is provided. Although on the face of the law there may be the

capacity to go further in reducing localness regulation, we set out in our consultation why we believe that our measures offer an appropriate balance – easing the pressures on the viability of the commercial radio sector while at the same time securing the continued provision of local radio content. This reflects the evidence available – both of the value to consumers and citizens of localness and of the burden of regulation and the financial health of the industry – in a way that meets Ofcom’s duties and in keeping with the spirit of the legislation.

### **Encouraging new UK-wide services**

- 1.16 Existing regional FM stations may request to have their localness obligations removed, allowing them to share their programming across a number of regions. We will generally consent to this in return for those stations providing a version of their programme service across the UK on DAB. This will foster competition and choice in UK-wide services, encourage a greater range and diversity of content for consumers, and provide the potential for new investment in programming. While the aim is to provide UK-wide services, the specific needs of the devolved nations mean that regional stations in Scotland and Wales will be required to retain their specific focus on programmes for their own nation for a number of hours a day.
- 1.17 Existing regional or London multiplex operators may request an extension to their existing licensed area, so they can form a single area with adjacent multiplexes. Ofcom may consent to such requests, following public consultation, if it is satisfied that doing so would not unacceptably narrow the range of programmes available to persons living in the area for which, before the proposed variation, the local radio multiplex service is available. Our policy is that we would be likely to allow them to do so provided that certain criteria, relating for example to the promotion of digital sound broadcasting and safeguarding the interests of existing stations, were met. Ofcom will also consider advertising further regional multiplexes in areas that do not already have them, should there be frequencies available and demand from potential operators.
- 1.18 Station operators may decide to offer a UK-wide service on a national multiplex. But using regional multiplexes plus some local multiplexes they could, if they wished, effectively form UK-wide stations with the ability to offer regional opt-out programming and advertising, taking advantage of the relaxation of localness requirements as set out in paragraph 1.16 above.

### **Regulating for localness within a sustainable, universal local tier**

- 1.19 Ofcom’s regulatory guidelines and licence conditions have previously required the majority of FM local stations to broadcast at least ten hours during weekdays of locally made programming containing local material. Co-location and programme sharing were generally permitted only for smaller stations.
- 1.20 The need to balance protection of local content with stations’ need to achieve commercial scale led us to propose a new set of defined or approved local areas within which stations would have far greater flexibility, while still being held to local programming requirements. We are now confirming those areas we consulted on with the exception of northern Scotland and Greater London, where we will continue to consult on requests on a case-by-case basis for the foreseeable future.
- 1.21 Within each approved area, our policy is that FM stations can request to co-locate and share all of their programming, effectively allowing them to come together to become larger, more viable stations. We will be likely to consent to such requests if

we are satisfied that the stations involved will continue to meet their licence obligations to provide local material relevant to the listeners in the licensed areas. We have changed our localness guidelines and format change policy to this effect (see Annexes 1 and 2).

- 1.22 Requests for flexibility beyond these areas will still be considered, but will require individual consultation and assessment using the existing criteria of station size, local affinities between the licensed areas of the stations concerned, distance between them and financial viability. Ofcom may consent to such requests, following public consultation, if the relevant statutory requirements are met.
- 1.23 Local multiplexes may request to carry the same set of stations as adjacent multiplexes within each approved area. Where spectrum availability allows, they may also request to use a common frequency across these multiplexes. They may also request to extend their licensed areas. Ofcom will consult before making a decision on such requests.
- 1.24 Listeners tell us they value news more than other content on local commercial radio. Local radio also provides a source of news plurality, complementing the BBC. We are changing our guidelines on local programming so that, generally, stations may choose either to retain the current commitment of at least ten hours of locally made programming daily, or to request a licence variation to reduce this to at least seven hours in return for broadcasting local news, regularly refreshed and updated, at least hourly during weekday daytimes. We have revised our localness guidelines and format change policy in accordance with this approach.
- 1.25 Local AM stations may request to be freed of any requirement to provide locally made programming, except for the existing licence requirement to produce at least 10 hours a day of daytime programming (including breakfast) on weekdays from within their home nation.

## Section 2

# Introduction

## **Commercial radio continues to face challenges, but the Digital Economy Act sets the industry on a path to deregulation**

- 2.1 Commercial radio continues to face significant challenges.
- The recent downturn in the economy brought with it a reduction in advertising spend. While radio listening generally remains robust, a fall in younger audience demographics may further reduce revenues in the near future. Structural adjustments in advertising suggest that revenues taken away from the radio sector may not return.
  - The increasing diversity of platforms and competition for audiences is putting an additional strain on stations' resources, with many paying for transmission on multiple platforms.
- 2.2 The Government's Digital Britain Report and the Digital Economy Act recently passed by Parliament represent steps towards a new regulatory and policy settlement for the radio industry as it moves into a digital future. The Act allows Ofcom to reduce significantly the burden of regulation on analogue commercial local radio.
- 2.3 The Digital Britain Report suggested that all UK-wide and large local stations would upgrade to digital-only broadcasting when certain criteria are met. The Act facilitates this upgrade process, which, in the absence of further legislation, will establish a 'glide path' towards a more lightly regulated radio sector. This is because the main focus of statutory regulation of localness and formats has been on analogue radio; digital services are currently less regulated. In particular, the twin localness requirements in legislation – that each local station contains an appropriate amount of local material, a suitable proportion of which is locally made – apply only to analogue radio services. Consequently, as and when upgrade happens those stations becoming digital-only will, in the absence of new legislation, automatically face less regulation than they do at present, where the constraint is analogue regulation. As a first step along this 'glide path', the Act allows Ofcom to reduce significantly the burden of localness regulation for analogue stations.
- 2.4 Digital radio services delivered on other platforms have even less statutory requirements: audio services on digital television require only adherence to the Broadcasting Code, and online radio faces no regulation at all. Therefore the amount of regulation of the sector will depend on the balance of digital platforms determined by the marketplace. It will be for Government and Parliament to decide how appropriate this regulatory 'glide path' is.
- 2.5 Ofcom will continue to support Government in its thinking on radio, with our research and analysis. This will include:
- An annual digital progress report, the first of which we will publish later this year, as requested by Government in the Digital Britain Report. This will track key metrics that are measuring the availability and uptake of digital radio services.



- A project to consider the options for the future regulatory framework for the small scale radio sector, including both commercial and community stations, which may not move to DAB under the proposed upgrade.
  - Leading a process, at the request of the Secretary of State, to consider the future spectrum planning requirements of digital radio to prepare for Digital Radio Upgrade and make a report to Ministers. This work will aim to establish and agree the current levels of acceptable FM coverage, which will provide the benchmark for all future planning for both BBC and commercial services, and to determine the most technically efficient way of matching DAB coverage to FM. This is likely to consider appropriate field strengths, the need for additional transmitters and changes to the existing infrastructure.
- 2.6 Ofcom is also taking a number of steps to deregulate the industry while aiming to protect consumers and ensure the radio industry delivers content that citizens and consumers value.
- We will shortly consult on the Broadcasting Code rules governing commercial references on radio, in light of the Government's decision to allow equivalent product placement on television. We will seek to afford stations greater freedom to explore new revenue streams, while ensuring that such activities remain transparent to listeners and that consumers are appropriately protected.
  - We are continuing to consider the regulation of music formats. Our July 2009 consultation did not make a proposal, but invited views as to whether there is a case for a limited redefinition of some formats. We did not receive evidence to support a change to current policy, but remain open to receiving any new data.
- 2.7 In addition, we recently recommended to Government that the radio-specific ownership rules could be removed entirely, and the local cross media ownership rules substantially liberalised<sup>2</sup>.
- 2.8 In preparation for the passing of the Digital Economy Act, Ofcom also consulted on how we would implement the expected provisions of the Act to balance the provision of the local programming that audiences value against the need to improve the financial viability and sustainability of commercial radio. This statement sets out our policy decisions on this matter.

### **Our recent proposals for regulation of localness on commercial radio**

- 2.9 In July 2009 our consultation, *Radio: the implications of Digital Britain for localness regulation*, set out a number of deregulatory proposals aimed at making local commercial radio more sustainable, while at the same time – and in line with our statutory duties - securing the delivery of local content citizens and consumers value and increasing choice and diversity of radio services.
- 2.10 The consultation was published in light of the *Digital Britain Final Report*, which proposed reform of localness regulation on radio (alongside other measures). Specifically, this asked Ofcom to:

---

<sup>2</sup> Report to the Secretary of State (Culture, Media and Sport) on the Media Ownership Rules, available at <http://www.ofcom.org.uk/consult/condocs/morr/statement/>

- Consider how to give greater flexibility for stations to co-locate, consulting on a new map of “mini-regions” which balances needs and expectations of listeners against the potential economic benefits to industry;
  - Proceed with working with industry to consider the re-planning of the existing local DAB map to increase viability of the DAB platform and prepare for the planned Digital Upgrade. The Report suggested this was likely to entail extending and merging local multiplexes, possibly changing existing frequencies to increase spectrum efficiency and the creation of a new second national commercial multiplex from the existing regional multiplexes; and
  - Consider reducing the number of locally-produced hours that stations are obliged to broadcast, in return for an enhanced commitment to regular and updated local news.
- 2.11 Our consultation proposed changes to localness regulation, some contingent upon Parliament passing new radio legislation following the Digital Britain Report. The subsequent Digital Economy Act, passed in April 2010, granted Ofcom the powers necessary to implement these proposals. The provisions included in the Digital Economy Act come into effect on 8 June 2010.
- 2.12 Our July 2009 consultation emphasised that we were consulting in advance of new legislation in order to make changes to regulation as quickly as possible following legislation being passed.
- 2.13 The deregulatory changes in this statement are based on the proposals in our consultation, supported by the evidence we analysed, and any further evidence and submissions presented to us in responses.

## Section 3

# Encouraging UK-wide services

- 3.1 One of the objectives of our July 2009 consultation was to enable and encourage enhanced choice and competition in radio broadcasting on a UK wide basis. This is in line with our statutory duties, the public purposes for radio and our wider strategic aims.
- 3.2 At a UK-wide level, the commercial radio sector complements the BBC's radio services to some extent, but the number of analogue UK-wide commercial services is very limited. Commercial radio has an important role providing competition and choice, diversity of genres and plurality of voice, but the commercial sectors ability to compete at a UK-wide level has so far been constrained.
- 3.3 While digital platforms offer a way to provide new UK-wide services, existing analogue commercial services have not found a way to become national without losing the regionally or locally-based advertising that sustains them.
- 3.4 Commercial radio services can achieve scale by targeting UK-wide audiences, enabling operators to invest in content and talent to create mass appeal services (perhaps by expanding existing services to a national basis), or to make niche services viable.
- 3.5 Some regional FM stations are focused on providing an extension of music choice as well as the required locally made programming and regional speech content. We identified these stations in our consultation and suggested that, if these stations were given the flexibility to become UK-wide stations, this could create greater competition and choice for listeners. Freeing these stations from obligations to provide locally made programming and regional speech content, in return, would be a way of giving these stations an incentive to make the necessary investments. This would not rule out the possibility of them making a commercial decision to continue to provide local content (using a combination of local and regional DAB multiplexes), if this was what listeners demanded.
- 3.6 We suggested that DAB would offer the most effective solution for commercial stations to grow their services and audience. As a platform it has characteristics that consumers value (it is free-to-access, affordable, available via portable and mobile devices), while offering listeners greater choice of services, the potential for text and graphics to accompany programmes and clearer reception once coverage is robust. Additionally, it offers broadcasters cheaper transmission costs and the opportunity to provide new services.

### **Proposal 1 – regional stations to be allowed to share programming to become national UK-wide stations**

- 3.7 We proposed that regional analogue stations (as defined by Ofcom in Figure 1 below) should be able to request to have their localness obligations removed, allowing them to share their programming across a number of regions, and that we may consent to this where those stations provide a version of that programme service nationally on DAB. Where they do so, our guidelines would be that they should not generally be required to broadcast local material and locally made programmes.

- 3.8 Otherwise, such regional analogue stations would be treated as large local FM stations and the relevant rules would be applied.
- 3.9 Due to the specific needs of the nations, we proposed that regional stations in Scotland and Wales should have to retain their specific nation focus for a number of hours a day (in line with the guidelines for large local stations). In Wales, where there are separate regional services for South Wales and North & Mid Wales (not yet launched), we suggested that these could combine to form a nation specific service for Wales, provided that service was carried in all areas of Wales on local DAB multiplexes (where available).
- 3.10 The proposal would be implemented via a change in Ofcom's localness guidelines and by making changes to licence conditions for stations which take advantage of the proposal.
- 3.11 The list of regional FM stations we proposed is as follows:

**Figure 1 Regional FM stations**

Station	Region(s)	Owner
Absolute Radio	London	TIML
Capital Radio	London	Global Radio
Galaxy	North East, Central Scotland, Yorkshire	Global Radio
Heart	London, East Midlands, West Midlands	Global Radio
Kerrang!	West Midlands	Bauer Media
Kiss	London, East of England, Severn Estuary	Bauer Media
LBC 97.3	London	Global Radio
Magic	London	Bauer Media
Nation Radio	South Wales	Town & Country
Real Radio	Central Scotland, North East, North West, Yorkshire, South Wales, North & Mid Wales	GMG Radio
Smooth Radio	London, East Midlands, West Midlands, North East, North West	GMG Radio
The Coast	Solent	Celador
Wave 105	Solent	Bauer Media
XFM	London	Global Radio

Source: Ofcom

- 3.12 We suggested that this proposal would have several benefits:
- A possible increase in UK-wide commercial services with the resources to provide higher quality programming, so offering a better consumer proposition.

- Enhanced choice and competition at all locations, offsetting any ‘under-provision’ of services that may have been a consequence of a limited number of regional stations in any one locality.
  - Cost savings for existing regional stations which would no longer have to maintain regional bases or regional programming, freeing up resources to invest in high quality UK-wide content.
  - The possibility that relevant stations could provide UK-wide services but (in conjunction with our second proposal) still offer some regionalised output and advertising, allowing stations the choice to offer such ‘local’ output. This proposal would therefore not necessarily forego the consumer and citizen benefits of localness, and the public purposes and strategic aims its provisions fulfils.
- 3.13 We set these against the possible costs of a loss of local (regional) programming which consumers may value (although many regional services were licensed as much for their music content as their regional relevance, the regional stations in Scotland and Wales have particular relevance to their respective nations). We also considered the costs to stations of greater transmission from having to provide a UK-wide DAB service rather than the existing regional DAB transmission, and the possible loss of regional advertising at least until national DAB coverage with regional opt-out capability is available.

### Consultation responses

- 3.14 Some of the main points raised by respondents are collated and summarised below. The responses are set out more fully in Annex 3. We take the same approach in each section of this statement headed “Consultation responses”.
- 3.15 Generally, respondents were in favour of the consultation proposal, with several welcoming the potential increase in the range of national UK-wide services, from both consumer and industry perspectives. The Ofcom Advisory Committee for Scotland stated that it “was glad to see that Ofcom has recognised the local nature of the regional services in Scotland and Wales”.
- 3.16 However, a number of respondents suggested amendments to the consultation proposal.
- Several respondents were of the view that a relatively low threshold for what constitutes ‘national’ DAB coverage should be applied, and that stations should be able to offer this coverage via carriage on a network of regional / local multiplexes. For example, RadioCentre was in favour of the approach outlined in the *Independent review of radio services and the existing localness regulation* report by John Myers (“the Myers Review”)<sup>3</sup>, which suggested that coverage should be available to more than 65% of the UK population. Other respondents supported a lower threshold of coverage without stating a preferred percentage, or favoured mechanisms such as a sliding scale whereby the coverage requirement changed as DAB penetration increased.
  - Two respondents opposed the notion that regional stations in Scotland and Wales would have to retain their specific nation focus. RadioCentre said that such stations were very likely to continue to produce local content, but that “we believe it should be their decision to do so”. It suggested that operators would

---

<sup>3</sup> Available at [http://www.culture.gov.uk/reference\\_library/publications/6053.aspx](http://www.culture.gov.uk/reference_library/publications/6053.aspx)

“have a strong disincentive to create a genuine UK-wide brand, [therefore] the unintended outcome of Ofcom’s proposal is that listeners could be denied the very national radio choice that the proposal seeks to secure”. Similarly, Town and Country Broadcasting stated that “the BBC does not apply this thinking to its national services and it would be completely wrong for commercial radio to be more restricted, particularly as the sector provides a large number of quality, popular and successful local stations in each Nation”.

- RadioCentre also suggested that the option to become a national brand should be open to all stations – in particular those Galaxy and Smooth stations which are designated in our consultation as being local and therefore outside our proposal.

### Consideration of responses<sup>4</sup>

3.17 We suggested in our consultation that regional stations sharing programming might be carried on a national DAB multiplex, and be allowed to drop their localness obligations in return. Three possible ways to provide ‘national’ digital coverage are as follows.

- By securing carriage on the current commercial multiplex covering Great Britain (operated by Digital One). Last summer there was vacant capacity for a number of stations, but most of that capacity has now been taken up and so the scope for more stations is limited.
- Through the licensing of a second national (UK-wide) commercial multiplex. Such a licence was awarded to 4 Digital Group in 2007, although 4DG subsequently decided not to proceed with its plans. Ofcom currently has no plans to advertise such a licence again given the apparent lack of demand, although the spectrum remains available and could be advertised should there be interest in the future. This would be a single licence using a single frequency with no option to provide local or regional advertising. Additionally, it should be noted that such a licence could also be used for other services and is not reserved exclusively for radio broadcasting.
- By the creation of a new UK-wide commercial radio multiplex formed by expanding the existing regional multiplexes (which between them are currently licensed to cover about half of the UK population) to cover the UK. These licences could, if legislation allowed, be merged into a single new national licence which would have the ability to offer regional programming and advertising (much as ITV does on television). However, this is not possible under current legislation. While the Digital Economy Act does allow for existing multiplexes to be expanded, it does not allow the formation of a single new, merged, national multiplex.

3.18 As highlighted, these options all face significant obstacles. There is little remaining free capacity on Digital One and it cannot offer regional advertising or programming; there is currently little demand from industry for Ofcom to license a new national single-frequency-network multiplex covering Great Britain (similar to Digital One); and, aside from the lack of legal power to merge multiplexes outlined above, a new enhanced regional network would not be able to cover the whole UK due to frequency constraints.

---

<sup>4</sup> We respond here to the main points referred to above. We take the same approach in each section of this statement headed “Consideration of responses”. Responses to other points made in the consultation are in Annex 3.

- 3.19 However, there is a fourth way to enable a station to attain UK-wide digital coverage – by obtaining carriage on a number of regional and / or local multiplexes to cover as much of the UK as possible. This approach, also referred to by some respondents to the consultation, would allow services to continue to offer regional opt-out programming and advertising if stations desired it and Ofcom viewed it as appropriate. It would also allow those operators of regional stations in more than one nation to offer nation-specific programming within a UK-wide service. With the existing multiplex map, this could be achieved via a combination of local and regional multiplexes. Alternatively, UK-wide digital coverage may be attainable by expanding the regional multiplexes and possibly advertising some new regional multiplexes in areas not currently covered by the regional layer.
- 3.20 We therefore agree with two points made by respondents. Firstly, we agree that carriage on a combination of local and regional multiplexes should be permitted in attaining national UK-wide coverage, as it represents the most feasible method of achieving this. Secondly, we are of the view that UK-wide coverage should be defined in such a way so as to maximise choice and competition across the UK, yet not be commercially unattractive to commercial operators, and acknowledge that it may be appropriate to agree a threshold over which DAB broadcasting by relevant regional stations could be characterised as ‘national.’
- 3.21 We note the arguments advanced by RadioCentre and Town and Country Broadcasting that national identity and nations programming do not constitute significant aspects of the proposition of some stations in Scotland and Wales. However, neither respondent highlighted specific evidence as a basis for this assertion. As outlined in our consultation, the identity of regional stations in Scotland and Wales is strongly rooted in their respective nations, and this may help to explain their success. For this reason, we do not believe it is appropriate to risk losing the nation-focused content these stations provide. We note further the support given to this position by the Advisory Committees for Wales and Scotland in their responses to our consultation. As noted above, using a combination of regional and local multiplexes would allow UK-wide stations to offer nation-specific content for the required number of hours a day.

#### *The appropriate DAB coverage level*

- 3.22 RadioCentre argued that a coverage level of 65% of the UK population, as suggested by the Myers review, would be an appropriate threshold that stations would have to achieve to trigger the removal of localness obligations. However, the Myers review does not specify the reason or offer evidence for selecting 65% as a threshold.
- 3.23 Our analysis suggests that 65% coverage would be realistically attainable. For example, through attaining carriage on all the regional multiplexes (including one of the Greater London multiplexes) alongside the local multiplexes in Northern Ireland, South Hampshire and Nottingham a group would reach this coverage threshold, assuming that coverage within each licensed multiplex area was complete at robust field-strengths (which it is not currently)<sup>5</sup>. While there would obviously be costs involved in this for station operators, these would not necessarily outweigh the potential benefits in the form of cost savings achieved by reducing the level of local material.

---

<sup>5</sup> It would be the responsibility of the group in question to come to commercial agreement with the relevant multiplex operators for carriage of the service.

- 3.24 Higher thresholds would also appear attainable for stations. For example, by securing carriage on the multiplexes highlighted above, alongside local multiplexes in Cornwall / Plymouth, Stoke and the Sussex Coast, a group would attain coverage of approximately 70% with appropriate incremental costs. Again, this example is based on the assumption that coverage within each licensed multiplex area will be complete at robust field-strengths.
- 3.25 We acknowledge that achieving particularly high levels of coverage through a combination of carriage on existing regional and local multiplexes is likely to incur transmission costs which may dis-incentivise groups against pursuing this course of action. However, it should be noted that our proposal aimed to enable and encourage enhanced choice and competition in radio broadcasting on a *UK-wide* basis. We do not consider that a coverage level of only around two-thirds of the population can be truly viewed as 'national'. Nor would it provide the benefits, consistent with our statutory functions and duties, and the public purposes for radio, which our proposal sought to attain.
- 3.26 Broadcasting services within the UK that have been mandated as 'national' have generally been required to achieve considerably higher coverage levels than 65%. Within the UK radio industry there are some precedents regarding what coverage constitutes a 'national', UK-wide service:
- Digital One – the application for the existing national commercial multiplex listed transmitters which would achieve a coverage level of 69% of the population of Great Britain at launch, but rising to between 80 and 85% at the end of its first three years of operation. In 2008, Digital One covered 92.6% of the population of Great Britain<sup>6</sup>.
  - Second DAB national radio multiplex licence – Ofcom received two applications in 2007 for a DAB radio multiplex licence, which was designed to cover the whole of the United Kingdom, the Channel Islands and the Isle of Man. 4 Digital Group Limited proposed to provide coverage of 86.6% of the adult population of the UK, while the National Grid Wireless application predicted a coverage level of 71% at launch, growing thereafter to 87%<sup>7</sup>.
  - BBC DAB coverage – as at January 2008, the BBC's national DAB multiplex covered 85% of the UK population<sup>8</sup>, with a commitment to reach 90% by the end of the current BBC Charter in 2016<sup>9</sup>.
  - UK-wide FM services – Classic FM is the only national commercial radio network on FM licensed to broadcast across the United Kingdom. As of 2008, Classic FM is estimated to have achieved 96.6% stereo coverage of the GB population and 92.8% of the Northern Ireland population<sup>10</sup>.
- 3.27 Similarly, within the wider broadcasting industry, a greater percentage of the population is commonly required to be covered by 'national' services. For instance, prior to Digital Switchover commencing, analogue TV services (excluding Five)

<sup>6</sup> Refers to outdoor coverage at 58 dBµV per metre. Estimated indoor coverage at 65 dBµV per metre was 81.6%. Note that the appropriate field-strengths for robust coverage are currently under review.

<sup>7</sup> Refers to outdoor coverage. Estimated indoor coverage of 80.5% (4DG) and 58% (NGW). Note that the appropriate field-strengths for robust coverage are currently under review.

<sup>8</sup> See [http://www.bbc.co.uk/aboutthebbc/purpose/public\\_purposes/communication.shtml](http://www.bbc.co.uk/aboutthebbc/purpose/public_purposes/communication.shtml)

<sup>9</sup> Ibid

<sup>10</sup> Field strength of 54 dBµV per metre



reached 98.5% of the UK population. Similarly, services carried on the three Public Service Broadcasting multiplexes will be available to 98.5% of the UK population upon the completion of Digital Switchover in 2012.

- 3.28 Taking the above examples into account, we believe it is reasonable to require any group requesting to remove their localness obligations and become national UK-wide stations to achieve a pre-launch coverage level significantly above 65% and to attain a level that can properly be characterised as 'national'.
- 3.29 We would expect groups wishing to take advantage of this policy to outline the expected level of coverage that stations sharing their programming would achieve (and, where they envisage a level of 'national' coverage rising over time from a minimum acceptable level to a higher level, a timetable for attaining that latter level) in order to no longer be required to broadcast local material and locally made programmes. The Digital One case detailed above – that of a coverage level at launch of approximately 70%, rising quickly to over 80% within three years – represents a precedent for DAB as to what constitutes a 'national' service, and we would be likely to accept such a proposal from any stations wishing to take up this option. We would also be open to other suggestions, provided they were accompanied by justification as to why the threshold suggested can be considered to offer increased choice and competition to consumers at the UK-wide level.
- 3.30 The examples above also indicate the number of variables which would need to be considered in assessing the appropriateness of any coverage level suggested by a group. Indoor and outdoor estimates at the appropriate field strengths, road coverage and the predicted roll out of services are all factors which we would envisage considering upon receipt of any request.
- 3.31 As indicated above, we are implementing this proposal by making appropriate changes to our localness guidelines. These new guidelines will in turn need to be applied to specific stations by making changes to their relevant licence conditions. Stations wishing to have their localness obligations removed in return for providing a service nationally on DAB would have to submit a format change request as part of their proposals (which would include the level of their proposed 'national coverage'). One of the relevant statutory criteria must be satisfied for Ofcom to consider a format change request<sup>11</sup>, and Ofcom may be required to consult on the request. As set out in our revised localness guidelines and format change policy (see Annexes 1 and 2), where one of those criteria is met, our policy is that, subject to the outcome of the consultation, we would be likely to allow the requested change in return for the stations providing a sufficiently 'national' service on DAB<sup>12</sup>. Within the format, we envisage including an ongoing licence condition requirement to provide a service nationally on DAB (including a requirement to provide a specified level of 'national coverage) in return for the reduction in localness obligations where those requirements are met.

---

<sup>11</sup> These are set out in section 106(1A) of the Broadcasting Act 1990. Relevant stations might, for example, be able to demonstrate that the substitution of a service provided nationally for one previously provided locally in each relevant licensed area would not narrow the range of programmes available by way of relevant independent radio services to persons living in that area

<sup>12</sup> Where or to the extent that the change sought relates only to the provision of a national DAB service and the removal of localness requirements. Where other format changes are sought, such as to the music requirements, we will continue to apply our existing format change policy to them.

### *Classification of stations*

- 3.32 We understand the argument that for some brands the distinction between regional and local licences does not appear to be relevant. For example, Galaxy has regional stations (as we have defined them) in the North East, Yorkshire and Central Scotland, but local stations in Manchester, Birmingham and South Hampshire. Respondents queried why these should be treated differently from each other.
- 3.33 It could be argued that all these stations are specialist music stations, and that the defining content which matters to listeners is music rather than any local or regional content. But it would be difficult to apply this same argument to, for example, Smooth which is a more mainstream music service and which has a number of regional stations in England but a local station in Glasgow.
- 3.34 A bespoke approach based on specific brands as they exist today would be difficult to regulate, given that a station may be rebranded and may change ownership at any time. It would not be practicable to have to change the licence requirements governing how much local material a station must broadcast based purely upon its brand.
- 3.35 In general therefore, we reject this argument and prefer to retain the simple rule that only regional stations<sup>13</sup> should be eligible to drop their local material in return for providing a national UK-wide service on DAB. As well as the virtue of simplicity, this rule reflects that these 'regional' stations are those which are generally focused on providing an extension of music choice, as well as the required locally made programming and local (regional) material. As a result, they are more apt to be given the flexibility to become national UK-wide stations, to create greater competition and choice at the national UK level, by freeing them from obligations to provide that locally made programming and local material.
- 3.36 However, should individual local stations wish to be considered as part of such a DAB service, on the basis of the specialist nature of their format (as opposed to their brand), we will consider each case on its merits and would consult on a case by case basis. Ofcom would, however, expect such stations to satisfy us that they share the more specialist music characteristics of the relevant regional stations, as opposed to being focused primarily on providing locally made programming and local material, and that the rationale for our policy also applies to them.

### Conclusion

- 3.37 The regional analogue stations listed at Figure 1 may request a format change to remove their localness obligations, allowing them to share their programming. Where a relevant statutory criterion is met<sup>14</sup>, and subject to any consultation, Ofcom would be likely to consent to this where those stations provide a version of the shared programming service across the UK on DAB<sup>15</sup>. Where they do, we will amend their licences so that they are no longer required to broadcast local material and locally made programmes. We have amended our localness guidelines to reflect

<sup>13</sup> As we proposed defining them in our consultation

<sup>14</sup> As indicated above, we can only exercise the discretion to allow a change, as reflected in this new policy, where one of the criteria in section 106(1A) of the Broadcasting Act 1990 is met.

<sup>15</sup> Again as we indicate above, this will be our policy where or to the extent that the change sought relates only to the provision of a national DAB service and the removal of localness requirements. Where other format changes are sought, such as to the music requirements, we will continue to apply our existing format change policy to them.

that stations providing UK-wide DAB services should not generally be required to broadcast local material and locally made programmes. We have also made amendments to our format change policy guidelines to reflect this new approach<sup>16</sup>.

- 3.38 It will be for each station to make proposals as to the extent of the population coverage on DAB they will provide and to satisfy us that we should regard it as 'national.' In line with precedents on DAB, we are likely to view 70% coverage level at launch rising to over 80% within three years as an acceptable suggestion. We also remain open to other coverage level suggestions, provided that stations accompany the proposal with justification as to why the threshold suggested can be considered to offer increased choice and competition to consumers on a 'national' UK-wide scale. We reserve the right to consult on requests.
- 3.39 Otherwise, such regional analogue stations would continue to be treated as large local FM stations, with the relevant regulatory rules applying.
- 3.40 Should individual local stations (not shown in the list of regional stations above) wish to be considered as part of such a service alongside a number of regional stations, on the basis of the specialist nature of their format, we will consider each case on its merits (as set out above and in our amended localness and format change policy guidelines).
- 3.41 Due to the specific needs of the nations, regional stations in Scotland and Wales should have to retain their specific nation focus for a certain number of hours a day in line with the localness guidelines for local stations.
- 3.42 In Wales, the regional stations for North and mid-Wales and for South Wales may request to stop providing separate local programming for each region, provided they commit to providing an all-Wales version of the service on local or regional multiplexes in every part of Wales where they exist.

## **Proposal 2 – expansion of existing regional multiplexes**

- 3.43 As part of our aim of encouraging new UK-wide services, the July 2009 consultation proposed that the six existing regional multiplexes (plus one of the three London multiplexes) should be allowed to combine and extend their areas to form a national UK-wide multiplex with the ability to offer regional opt-out programming and advertising.
- 3.44 This 'national' multiplex could have been achieved in one of two ways. It could, if legislation allowed, have been achieved by a formal merger of regional multiplexes into a single national UK-wide multiplex under a single licence. Alternatively, by extending and combining the licensed areas of regional multiplexes, without formally merging them and perhaps adding new regional multiplexes, a national UK-wide multiplex could in effect be formed. In referring to allowing regional multiplexes '*....to combine and extend their areas in effect to form a multiplex with national coverage...*' our proposal left open either possibility.
- 3.45 The first possibility was contingent on relevant legislation being passed to grant Ofcom the necessary powers. The power formally to merge regional licences into a

---

<sup>16</sup> We have also made a small number of other amendments to parts of the explanatory background text of the format change policy. These do not affect the substantive content of the policy, the changes to which we consulted on in the July 2009 consultation.

new national licence is not included in the Digital Economy Act and so we cannot proceed on this basis.

- 3.46 The Digital Economy Act nonetheless does allow Ofcom to vary the frequency, or extend or reduce the coverage area, of a local radio multiplex licence. This allows the extension of coverage to the existing regional multiplexes, so that they could come to a commercial arrangement along the lines described. However, further technical work has shown that complete UK-wide coverage may not be possible, and this would prevent it from becoming a national multiplex 'in effect'.
- 3.47 Stations looking to achieve 'national' coverage for a service as part of proposal 1 may also therefore require carriage on some local multiplexes outside the areas covered by the regional multiplexes.

### Consultation responses

- 3.48 Respondents generally welcomed the consultation proposal, acknowledging the benefits that could be achieved through an extension of the coverage of DAB multiplexes and enhancement of choice.
- 3.49 We note that many respondents expressed explicit support for a second national DAB multiplex as we proposed. RadioCentre welcomed "the possibility of a second national regionalised digital multiplex that would provide the prospect of more national services but with the additional flexibility to offer regionalised opt-outs for advertising and programming if appropriate", but stated that this should not be imposed by Ofcom or by government.
- 3.50 The BBC raised concerns that the creation of a second national commercial multiplex could act to the detriment of the existing local commercial multiplexes. Accordingly, the BBC suggested that Ofcom only implement the proposal once we have satisfied ourselves that it will not unduly detract from the viability of the local multiplexes.
- 3.51 UKRD opposed the proposal, stating that it "will inevitably result in a diminution of locally/regionally based programming capacity and the undermining of the capacity of the commercial sector to hold and grow its market share in the local radio marketplace; its greatest strength".

### Consideration of responses

- 3.52 As highlighted above, the Digital Economy Act does not make provision for the formal merger of regional multiplexes into a second, single national multiplex licence. Nevertheless, we are of the view that similar benefits to both industry and consumers can be realised through the extension of licensed areas and the possible sharing of frequencies of existing multiplexes. We therefore view the support for a second national DAB multiplex as consistent in principle with our proposal about varying the existing regional multiplexes.
- 3.53 We agree with RadioCentre that Ofcom should not be prescriptive on this issue, and our proposal merely states the policy that we would be open to such requests, not that we would require multiplex operators to extend their licensed areas or share frequencies. Indeed, the Digital Economy Act requires Ofcom to have received an application for the variation from the licence holder before Ofcom can decide whether or not to approve the variation. We view the matter as a purely commercial decision for operators to take.

- 3.54 We do not anticipate the viability of local multiplexes will be placed in danger by the expansion of regional multiplexes and the possibility of frequency sharing. Indeed, we believe that other proposals contained within this statement would strengthen local commercial multiplexes. For example, proposal 5 would allow local multiplexes to merge, extend their licensed areas and share frequencies, thus affording operators greater commercial freedom in deciding how best to ensure their viability. They would, presumably, seek to take advantage of this opportunity if it made financial sense to do so. Similarly, we have outlined that the implementation of proposal 1 would be likely to involve stations securing carriage on local multiplexes as well as regional ones, in order to achieve greater levels of coverage. Furthermore, the policy criteria set out in our consultation and below seek further to protect the rights of local multiplex operators and stations.
- 3.55 UKRD did not highlight specific evidence indicating that the proposal would lead to a reduction in local programming. We do not believe that an expansion of the areas of regional multiplexes would result in a significant reduction in locally / regionally based programming. Indeed, we would highlight that this proposal assists any station taking up proposal 1 who wished to retain a local element to their programming. The evidence we considered in our July 2009 consultation indicated that both stations and advertisers favoured a geographical mix of national and local services, which suggests that local programming would remain an important factor in many stations' output.

## Conclusion

- 3.56 The Digital Economy Act grants Ofcom the power to vary the frequency and licensed area of local radio multiplexes, where the relevant requirements are met. It does not, however, allow for the merger of these multiplexes into a single UK-wide multiplex. Moreover, for technical reasons, it is not possible to extend and merge regional multiplexes to form a patchwork UK-wide multiplex 'in effect.' We cannot, therefore, implement our proposal 2 in full.
- 3.57 Regional multiplex operators may, however, request to extend their licensed areas and / or share frequencies<sup>17</sup>. As set out in the Digital Economy Act, operators must submit a technical plan which indicates the proposed coverage area, the timetable and the technical means for implementing the change. We are required to consult on the proposal before granting an application, and may only grant approval if we are satisfied that the variation will not unacceptably narrow the range of local DAB programmes in the area for which the local radio multiplex is currently provided.
- 3.58 Some of the policy criteria we proposed in July 2009 remain relevant despite the limitations in the new powers we are given by the Digital Economy Act. We will consider operators' requests in line with our general statutory powers and duties, and set out how we think they are, or are not met, in connection with any application when we consult on it. Our general policy<sup>18</sup> will be that we will grant those requests provided we are satisfied that:
- doing so would be calculated to maintain or promote the development of digital sound broadcasting in the UK otherwise than by satellite;

---

<sup>17</sup> Any extensions of these regional multiplexes will not, however, create a layer of DAB coverage sufficient to sustain 'national' DAB coverage for the purposes of our proposal 1 above

<sup>18</sup> What we say here is separate from our decision on proposal 5 (see below), which concerns local multiplexes within approved areas.

- the licensees' proposed coverage plans are satisfactory;
- the licensees have the ability to maintain the licensed service; and
- there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplexes and the rights and interests of other multiplex operators (and the stations they carry)<sup>19</sup>.

3.59 We will also consider licensing further regional multiplexes where there is available spectrum and where there is no existing regional multiplex.

---

<sup>19</sup> We do not envisage such sufficient safeguards to amount to a 'veto' for third parties. Rather, we would anticipate measures such as clear assurances regarding existing contacts and agreements.

## Section 4

# Regulating for localness

- 4.1 In our July 2009 consultation document, we outlined our objective to create a sustainable, universal local tier of commercial radio services, and to reform localness regulation within this new tier.
- 4.2 We presented research which demonstrated the public's desire for commercial local radio services, the consumer benefits of local commercial radio (in terms of listening enjoyment and connection with local matters) and the wider benefits to communities and citizens.
- 4.3 The research also demonstrated that while listeners believe "local" generally means their town or city, they also want services of a certain quality. There is often a trade-off between these.
- 4.4 Our analysis of viability suggested that below a certain size, stations may be at risk of closure, potentially leaving some areas without a commercial local radio station at all.
- 4.5 The contribution made by commercial local radio to consumer and citizen value is to a large degree based on the value of local content. It is not clear that the market environment and business model for commercial radio funding would necessarily fully support a socially optimal level of localness and local output. This was the finding of our earlier work on the Future of Radio and our rationale for market intervention.<sup>20</sup>
- 4.6 To strike the balance between providing the localness audiences value and the viability of those services, we therefore made five proposals relating to localness obligations.

### **Proposals 3 and 4 – co-location and programme sharing within a new set of approved areas**

- 4.7 In our July 2009 consultation, we outlined evidence suggesting that it is important for local material to be generally produced in or near the area to which the station is broadcasting. While some local information, whether news, traffic or weather bulletins can be produced elsewhere, authentic local radio depends upon the presenters and production being rooted in the communities they are broadcasting to. We noted that future legislation would be likely to retain an obligation for a proportion of programming to be produced in specified areas.
- 4.8 However, we also assessed evidence suggesting that local stations need to achieve a certain scale to be viable. We acknowledged that one way they are constrained is by our localness guidelines and licence requirements on location, which affect the size and scope of stations' business operations by confining them to a small area. Another constraint is the need to maintain discrete programming and the associated costs of doing so.

---

<sup>20</sup> *The Future of Radio: The future of FM and AM services and the alignment of analogue and digital regulation*, Ofcom, 17 April 2007, available at <http://www.ofcom.org.uk/consult/condocs/futureradio/future.pdf>

- 4.9 Further relaxation of the current rules on station location and programme sharing could therefore allow co-owned stations which are within a newly approved area to exploit synergies, make savings, and effectively achieve greater scale.
- 4.10 To this end, we proposed that, subject to changes in the legislation, we would define a set of areas covering the UK, taking into account existing transmission areas, scale/viability, and local affinities. Within these approved areas, stations would be able to request to co-locate (and produce their 'locally made' programmes). Stations within these areas would also be able to request to share all of their programming, effectively allowing them to come together to become larger, more viable stations.
- 4.11 We proposed that, provided the relevant statutory requirements of any future legislation were met, we would be likely to consent to either of these requests as long as we were satisfied the stations involved would continue to meet their licence obligations to provide local material relevant to listeners in their licensed areas. Where stations from separate approved areas requested to co-locate or programme share, we indicated that we would continue to consider requests on a case-by case basis using the existing criteria of size, affinities and financial viability set out in our localness guidelines. We envisaged changing our localness guidelines to these effects.
- 4.12 This proposal was contingent on relevant legislation being passed. The Digital Economy Act grants Ofcom the power to create approved areas and, in effect, allows stations to produce local programming from anywhere within this approved area.
- 4.13 The Act further specifies that, before approving an area, Ofcom must publish a document specifying the area that they propose to approve and a period in which representations may be made to Ofcom about the proposals.
- 4.14 The provisions of the Act do not come into force until 8 June 2010 and so we will not consider any requests relating to these approved areas until that date.
- 4.15 We published our proposed approved areas in the July 2009 consultation. These were based on analogue heritage stations' coverage and existing multiplexes, the population of the area, local affinities and transmission considerations. The map is reproduced at Figure 2 below.

### Consultation responses

- 4.16 A number of respondents were in favour of the proposals, welcoming the greater flexibility offered to stations in terms of co-location and programme sharing.
- 4.17 Some respondents supported the direction of the proposals, but stated that a different approach should be adopted in drawing up approved areas.



Figure 2 – Proposed approved areas



- 4.18 UTV, Town and Country Broadcasting and RadioCentre all argued that the approved areas were too small and inflexible. RadioCentre suggested that stations should be allowed to co-locate and share programmes with any station within its own area or in any adjacent area, provided the station had a coverage area population of under one million. UTV suggested that approved areas should be based on existing BBC regions, that they should include ‘overlaps’ and that smaller stations which were situated in overlaps should be allowed to co-locate and programme share within any of the overlapping approved areas. The response highlighted that our July 2009 consultation had proposed overlapping regions in the Greater London area, and noted that stations from opposite sides of London would be able to co-locate. Town and Country Broadcasting suggested ITV regions could be used as a basis for defining the approved areas.
- 4.19 Other respondents viewed the proposed approved areas as being too large to form the basis for a framework which guarantees that audiences will be provided with sufficiently local content, and suggesting that this might lead to the creation of new regional stations. UKRD viewed the present TV regions as “too large an area”. One respondent warned that co-location could threaten the delivery of local content and argued that we should lower the threshold above which stations would be considered too large to co-locate.
- 4.20 The Advisory Committee for Scotland questioned whether it was necessary to grant Scottish stations greater freedom to co-locate and programme share, arguing that the Scottish local radio sector was financially relatively robust. The Committee also raised concerns that the proposal might have a detrimental effect on the provision of localness in Scotland because the approved areas in Scotland would allow for co-location between stations targeting areas with very limited cultural affinities.
- 4.21 The Advisory Committee for Wales suggested that the proposed areas “appear to be sensible in relation to Wales”, while also stating its concern “that the north and mid Wales area is very large geographically”. The response also stressed that it was important to ensure that the implementation of the proposals did not act to the detriment of the provision of Welsh language services.

### Consideration of responses

- 4.22 RadioCentre’s suggestion of allowing co-location between stations in neighbouring areas effectively amounts to an expansion of each of the approved areas, with significant overlaps. Our July 2009 consultation indicated that expanding the size of the areas within which stations were allowed to co-locate by any appreciable margin would significantly detract from the quality of localness provision, which our evidence demonstrates consumers and citizens value very highly, thereby causing detriment to citizens and consumers. Conversely, we acknowledge that it may be of commercial benefit to industry stakeholders, allowing greater consolidation of radio groups’ operations.
- 4.23 As was noted in the consultation, there may be a trade-off to be made between guaranteeing localness provision and securing the long-term viability of the sector. Our primary duty is to citizens and consumers. Alongside that are our other duties relating to local radio services, including ensuring that local radio services broadcast local material, a suitable proportion of which is locally made, and our public purposes for radio. In light of all these, the case for reducing the provision of local content above and beyond that which is necessary to ensure the viability of local radio stations is not strong in instances where such an action would be likely to cause significant detriment to the interests of citizens and consumers.

- 4.24 Similarly we reject the suggestion that television regions should be used as approved areas. These regions were based on traditional transmitter patterns rather than local affinities and in some cases are extremely large – for example the whole of Scotland or Wales or the East of England, which stretches from Southend to Cromer and inland to Northampton.
- 4.25 While the proposal as it stands would afford stations opportunities for co-location and / or programme sharing, we accept that expanding approved areas (either directly or by incorporating adjacent areas) would offer an increased choice for these stations by capturing greater clusters of potential affiliates.
- 4.26 However, the financial analysis undertaken in our consultation indicates that co-location and / or programme sharing between pairs of stations alone would provide a sufficient boost to the viability of the sector. Since our proposed approved areas afford this opportunity to all stations, we believe that this provides the sector with enough flexibility to rationalise operations and secure its viability. In view of the strong evidence of the citizen and consumer value of local content, we do not believe that the case for enlarging the approved areas is sufficiently strong to justify an associated reduction in localness.
- 4.27 We acknowledge the reasoning behind UTV’s suggestion of area overlaps. While we believe that our proposed approved areas cover populations which have, broadly speaking, a common sense of local identity, we accept that there will be instances where stations near the borders of these areas may serve communities which have significant affinities with one another.
- 4.28 We believe that making case-by-case decisions about cross-boundary co-location, as proposed in our consultation document, would seem an appropriate policy option for dealing with these instances. Stations on either side of boundaries between approved areas will retain the commercial freedom to request co-location, and these requests will be judged against the existing criteria of size, affinity and financial viability.
- 4.29 We do, however, agree with UTV’s point regarding the proposed London area and the overlaps it has with other areas. As noted at 4.15, our original proposals were based on analogue heritage stations’ coverage and existing multiplexes. The London heritage stations and multiplexes have a particularly large coverage area that overlaps with that of other local stations and multiplexes, and this consideration informed our original proposal. As UTV highlights, small stations within the London area would be able to co-locate and share programming under this suggestion, despite being very many miles away from one another on opposite sides of London and having few local affinities. Upon further reflection, we do not believe that this is of optimal benefit to consumers and citizens, particularly given the opportunities that would arise for stations in the overlaps to co-locate within the approved areas they would fall within (e.g. the Kent region or the Home Counties region). Consequently, we have not opted to proceed with the London area as originally proposed, and will not approve a specific area for this region. Stations within Greater London wishing to co-locate or share programming should submit a request to Ofcom to this effect. We will assess any application against our existing case-by-case criteria, and may if appropriate consult on a newly defined approved area.
- 4.30 Were we to adopt smaller approved areas, as suggested by some respondents, this would in the short term mean that the local content broadcast on stations was more closely linked to the existing licensed areas. However, the viability work presented in our consultation suggested that where coverage areas have a population below

around 700,000, many stations may not be viable if the worst-case projections for advertising revenue were realised (although this varies very much depending upon individual circumstances). Therefore, adopting approved areas which were smaller than those we have proposed may not be appropriate to allow struggling local stations to achieve sufficient scale to ensure their survival.

- 4.31 We also note that government policy, supported by many in the industry, is for larger local stations to migrate to DAB in the medium term. Our proposed approved areas would allow this, being broadly based on the existing multiplex coverage areas, and thus afford stations a route to flexibility that is consistent with their likely business strategies.
- 4.32 The Advisory Committees for Scotland and Wales raised questions about the size of the approved areas in the nations. The Scottish Committee suggested that as currently drafted, the map of approved areas would allow co-location across parts of the country with limited cultural affinities. It is true that the approved areas in Scotland in particular cover a particularly large geographic area and span areas of the country between which there are obvious cultural differences. Similarly, we are aware that the local radio sector in Scotland is more financially robust than in other parts of the country, and that pressures on the viability of stations are not as acute. Accordingly, we are persuaded by the arguments made by the Advisory Committees.
- 4.33 To this end, and noting the distances between the established local commercial stations in Northern Scotland, we have decided not to approve our proposed area for Northern Scotland. We will instead assess any applications relating to stations in this region against our existing case-by-case criteria, and may if appropriate consult on a newly defined area.
- 4.34 In Wales, the only FM station in mid-Wales (Radio Ceredigion) has already, with the support of Ofcom's Advisory Committee for Wales, been granted permission to co-locate with Radio Pembrokeshire (although its programming must remain distinct) and so the issue of the size of the area of north and mid-Wales is no longer relevant.

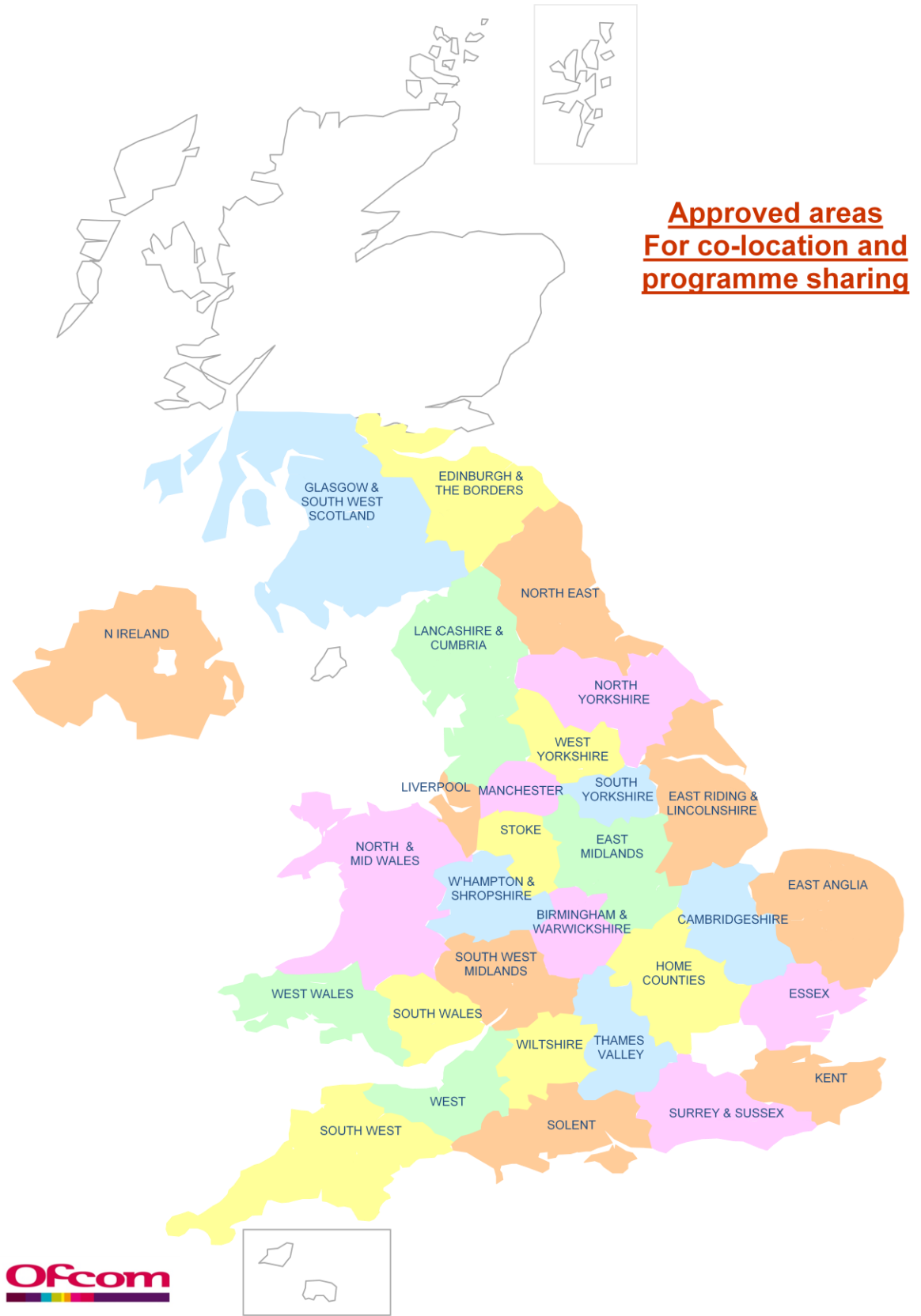
## Conclusion

- 4.35 Figure 3 provides an overview of the final approved areas<sup>21</sup>. Indicative maps are provided in Annex 5, while the definitive list in Annex 6 sets out the approved area for each licensed station (where applicable). We believe that these areas will allow stations to deliver the localness listeners value, while taking into account existing transmission areas, scale / viability and local affinities.

---

<sup>21</sup> The map is illustrative only. A list showing which analogue stations and which local DAB multiplexes are included in each approved area is shown in Annex 6.

Figure 3 – Approved areas



- 4.36 Within these areas, stations will be able to request to co-locate and / or share all of their programming, effectively allowing them to come together to become larger, more viable stations. Ofcom is likely to consent to such requests<sup>22</sup> provided we are satisfied that the stations involved will continue to meet their licence obligations to provide local material relevant to listeners in each part of their licensed areas. We have amended our localness guidelines and our format change policy to take account of this policy (see Annexes 1 and 2).
- 4.37 Stations wishing to co-locate within an approved area will have to submit a format change request. As set out in our revised format change policy (see Annex 2), one of the relevant statutory criteria<sup>23</sup> must be satisfied for Ofcom to consider a format change for any station. As co-location involves a change in the place the station's programmes are made, from one within its licensed area to one in the relevant approved area, one of the statutory criteria would be met in these cases. We would then have discretion to allow the change, and our policy is that we would be likely to do so as set out in the preceding paragraph. We are not required by legislation to consult on co-location requests within approved areas.
- 4.38 Similarly, stations within approved areas wishing to share all of their programming will have to submit a format change request. Again, as set out in our revised format change policy (see Annex 2), one of the relevant statutory criteria must be satisfied for Ofcom to consider a format change for any station. Where a proposed request required a substantial change to the character of the stations involved, we would conduct short consultations. Subject to a relevant statutory criterion being met, and to the consultation, our general policy would be that we would be likely to grant the request as set out in paragraph 0 above.
- 4.39 Where stations not in the same approved area request to co-locate or share programming we will continue to consider requests on a case-by-case basis using the existing criteria of station size, affinities between the station areas concerned, distance between the stations and financial viability, as set out in our localness guidelines. We are also likely to require that the relevant stations will continue to meet their local material obligations. These may require short consultations, in keeping with our existing policy and the relevant statutory requirements.

### **Proposal 5 – merger or expansions of local multiplexes**

- 4.40 The first set of local digital multiplex licences issued by the Radio Authority were based on the coverage areas of the commercial 'heritage' stations. Subsequent licences awarded by Ofcom have tended to be based on county and metropolitan boundaries. The legislation which allowed us to advertise and licence local multiplexes did not grant us the power to vary the frequency or coverage area of these licences.
- 4.41 As noted elsewhere in this statement, the Digital Economy Act grants Ofcom the powers to vary the frequency or extend or reduce the coverage area of a local radio multiplex licence, at the request of the multiplex operator and following public consultation. This in turn allows us to be able to align the frequencies of adjacent

<sup>22</sup> Where they relate only to a change in the place the station's programmes are made, from one within its licensed area to one in the relevant approved area, and/or to programme sharing (that does not involve Character of Service changes, such as to music requirements) within the relevant approved area. Where other format changes are sought, such as to music requirements in Characters of Service, we will continue to apply our existing format change policy.

<sup>23</sup> In section 106(1A) of the Broadcasting Act 1990

multiplexes (provided they carried the same programme services) so as to improve coverage now or make future expansion of coverage more effective.

- 4.42 For example, using a single frequency for two adjacent areas may reduce the number of transmitters required or may simply improve coverage from existing transmitters by the use of a single frequency network or the ability to use higher powers.
- 4.43 We proposed in our consultation that, once we were granted the relevant powers, local multiplexes within the approved areas should be allowed effectively to merge, including by sharing frequencies (if possible), and be extended into any un-served localities within that area, where Ofcom consider that appropriate. We envisaged short consultations in most cases.
- 4.44 We proposed that, provided any new statutory requirements were satisfied, we were likely to consent where we considered each of the following criteria to be met:
- the merger and/or extension would be calculated to maintain or promote the development of local digital sound broadcasting otherwise than by satellite;
  - the licensees' proposed coverage plans were satisfactory;
  - the licensees had the ability to maintain the licensed service; and
  - there were sufficient safeguards in place to protect the rights and interests of stations carried on the multiplexes and the rights and interests of other multiplex operators (and the stations they carry)<sup>24</sup>.
- 4.45 Additionally, we indicated that one of the following criteria would also have to be met, namely that the merger and / or extension:
- would not unacceptably narrow the range of programmes available on local digital sound programme services to those living in the area or locality covered by the multiplexes;
  - would be conducive to the maintenance or promotion of fair and effective competition in that area or locality; or
  - was supported or demanded to a significant extent by those persons living in that area or locality.
- 4.46 We acknowledged that certain costs would be associated with this proposal were the multiplex operators to take up the offer. For instance, there may costs to individual stations carried by multiplexes following changes of area – either through increased transmission costs arising from covering areas of increased size, or through losing the ability to target specific areas. Similarly, changes to the infrastructure would be at cost to multiplex operators, which may in turn be passed on to stations.
- 4.47 However, we suggested that the benefits would outweigh these costs. Coverage would be greatly improved, both in the short-term and the longer term, bringing new services to citizens and consumers in currently un-served localities. Furthermore, there may be some operating cost savings for multiplex operators, which may in turn

---

<sup>24</sup> We do not envisage such sufficient safeguards to amount to a 'veto' for third parties. Rather, we would anticipate measures such as clear assurances regarding existing contacts and agreements.

be passed on to stations. Moreover, a greater geographical reach for a station would increase the population coverage and by extension may make the station more commercially attractive to advertisers. We also proposed that we would require the safeguards for stations' rights and obligations referred to above.

### Consultation responses

- 4.48 The proposal was generally received favourably by respondents. Industry stakeholders such as RadioCentre, Town and Country Broadcasting, Folder Media, CBC and Arqiva supported the proposal, while additional stakeholders such as the Advisory Committee for Scotland were also in favour.
- 4.49 UKRD qualified its support for the proposal, stating a possible consequence would be “to endanger the long term future of some highly successful and popular local stations”. It stated that, should the proposal be adopted, “there must be opportunity for operators to provide a service to a smaller transmission area within the larger area intended”.
- 4.50 UTV – responding to proposals 3, 4 and 5 collectively – stated that the introduction of approved areas “does not constitute the optimal means of delivering regulatory objectives”, and that in its view “the proposed areas are small, inflexible, and unnecessarily linked to the potential future coverage of local DAB services.”

### Consideration of responses

- 4.51 We welcome the high level of support for this proposal by many respondents. In our view, the opportunity to merge multiplexes, share frequencies and extend coverage areas is likely to result in benefits to multiplex operators, station operators and consumers and citizens alike.
- 4.52 In response to UKRD's point, we have not seen evidence to suggest that the long term future of some smaller local stations would be endangered by the merger of multiplexes, the extension of licence areas or the sharing of frequencies. The Digital Britain Report suggested that smaller stations will be expected to remain on FM after any digital switchover for the national and large local stations. Such stations should not therefore be affected by the merger of local multiplexes.
- 4.53 Furthermore, we believe that, were such a risk posed by any proposed request, this would be mitigated by the consideration in granting any variation of whether sufficient safeguards were in place to protect the rights and interests of stations carried on the multiplexes. Similarly, we are required by the Digital Economy Act to reject any proposal that would unacceptably narrow the range of programmes available on local digital sound programme services to those living in the area or locality currently covered by the multiplexes. We believe that satisfying this requirement would ensure that stations carried on the multiplexes would not be placed in danger by any coverage expansion.
- 4.54 The proposed areas have been constructed on the basis of local affinities and population size (which relates to financial viability). We believe that they are appropriately designed for delivering the benefits of greater coverage and potential cost savings while at the same time retaining a suitable level of localness for the relevant population. We do, however, acknowledge that there may be exceptional circumstances, which may have to be assessed on a case by case basis. Similarly, as noted, we are required by the Digital Economy Act to consult on any changes to



multiplex areas. Any parties opposed to the request will be able to make representations during this period.

## Conclusion

- 4.55 Within the approved areas shown in Annex 5, local multiplex operators may request an amendment to their licence in order to vary the frequency or coverage area of the multiplex. This allows operators effectively to merge multiplexes, including by sharing frequencies (if possible), and be extended into any un-served localities within the relevant area.
- 4.56 We set out in our consultation our proposal that we were likely to consent to such requests, where the criteria outlined in 4.44 were met. We proposed that, where any statutory requirements are met so as to give us the power to consent to such requests, we would be likely to exercise our discretion to do so where certain policy criteria are fulfilled. However, these criteria were proposed before the wording of the Digital Economy Bill (now the Act) was fully settled. In the event, some of our proposed policy criteria have been built into the statutory requirements of the Act. In that sense, some of those criteria have been partly superseded by the Act.
- 4.57 The Broadcasting Act 1996 (as amended by the Digital Economy Act) now lists several requirements which must be met before Ofcom may vary a local radio multiplex licence, namely:
- Ofcom must have received an application for the variation from the licence holder;
  - The application must include a technical plan detailing the proposed coverage area, estimated timetable and the technical means by which it would be achieved;
  - Ofcom must consult before deciding whether to grant the application; and
  - The variation may only be granted if Ofcom is satisfied that doing so would not unacceptably narrow the range of programmes available by way of local digital sound programme services to persons living in the area or locality for which, before the proposed variation, the local radio multiplex service is required to be available.
- 4.58 Where these statutory requirements are met, and subject to the results of the consultation we are required to carry out, we are likely to consent to requests where we consider each of the following criteria to be met:
- the merger and/or extension would be calculated to maintain or promote the development of local digital sound broadcasting otherwise than by satellite;
  - the licensees' proposed coverage plans are satisfactory;
  - the licensees have the ability to maintain the licensed service; and
  - there are sufficient safeguards in place to protect the rights and interests of stations carried on the multiplexes and the rights and interests of other multiplex operators (and the stations they carry).

- 4.59 Where a request for a licence variation requires a change to the existing frequency, approval will be subject to the availability of a suitable alternative frequency and, in connection with the last of the policy criteria set out above, consideration of the knock-on implications to the frequencies of other multiplexes (and the stations they carry). Multiplex operators may also seek Ofcom's consent to offer the same services across the relevant local multiplexes, in effect merging them into a single area, as far as programme services are concerned.

### **Proposal 6 – an enhanced news option for local FM stations**

- 4.60 Currently, our localness guidelines state that local stations should generally produce a minimum of ten hours per day of locally made programmes which include local material during weekday daytimes (including breakfast) and a minimum of four hours per day at weekends during daytime. Further to this, the guidelines suggest that stations should generally commit to local news throughout peak time.<sup>25</sup> Stations can request lesser or different requirements in exceptional circumstances, and we consider such requests on a case by case basis (as well as applying the relevant statutory criteria). Requirements for local material and locally made programming are written into local stations' formats as binding conditions.
- 4.61 The qualitative research we described in our July 2009 consultation suggested that while listeners value the "softer" local content that stations provide, including a sense of community and involvement, they place even greater importance on local news, traffic and weather. News is important not only as the most valued type of content for consumers, but for its obvious citizen implications. Radio plays a particular role in the local distribution and consumption of news that complements the role of other media. Local news on local radio is therefore vital in delivering the public purpose for radio of sustaining citizenship and civil society, and promoting social gain.
- 4.62 The *Digital Britain Final Report* asked Ofcom to consider a reduction in the number of locally produced hours in return for an enhanced commitment to regular and updated local news. As we have suggested previously<sup>26</sup> and as outlined in our consultation, there is a particular value of news content on local commercial radio, and we consider it consistent with our duties to offer this additional option.
- 4.63 We therefore proposed new guidelines that local FM stations should generally be allowed to reduce the number of hours of locally made programmes they broadcast during the week from a minimum of ten hours per day to a minimum of seven hours per day (during daytime and including breakfast) if they commit to broadcast hourly local news bulletins throughout daytime (and at weekend peak). The requirement for at least four hours of locally made programming on each weekend day would remain. This gives stations the flexibility to reduce the number of local hours produced should they wish and make associated cost savings.
- 4.64 We also suggested that the guidance concerning local material within locally made programming would change. The localness guidance would still apply generally, but we proposed some revised guidelines about what stations' local news obligations mean. The key new guideline we proposed is that all stations that offer local news should ensure it is regularly refreshed and updated.

<sup>25</sup> Defined as weekday breakfast and drivetime, and weekend late breakfast

<sup>26</sup> For example, in our published submission *Building on the Myers Review*. Available at <http://www.ofcom.org.uk/radio/ifi/myers.pdf>

## Consultation responses

- 4.65 Respondents were broadly in favour of this proposal, viewing the suggestion as providing operational flexibility for stations while reflecting the particular value which consumers ascribe to local news content.
- 4.66 Some felt that the proposal did not go far enough. RadioCentre said that the current guideline of a minimum of ten hours per day within thirteen daytime hours was often met by having two five hour shifts and a three hour networked show. The response stated that “a requirement of seven hours of local programming is likely to be covered by two shifts in the same way as ten hours often are now – with no real savings and therefore no real incentive to opt for the enhanced news option”.
- 4.67 RadioCentre consequently suggested that where local news is only broadcast at peak times, stations should be required to produce seven hours of locally-made programming on weekdays. Where an enhanced news option of hourly local news is adopted, four hours per weekday should be required to be produced locally. It was further proposed that stations should be free to schedule their locally-made programming at any time during the daytime, and that they should not be compelled to include it at breakfast time.
- 4.68 Town and Country Broadcasting stated its belief that “the addition of any local news requirements is totally unnecessary...if local stations want to provide local news then they should be able to do so”.

## Consideration of responses

- 4.69 As has been highlighted, we are of the view that there is a trade-off to be made between the provision of local programming and the cost savings available to the local commercial radio sector. We are of the view that locally made programmes remain firmly within the interests of consumers and citizens, and our research supports this. There is thus a balance to be struck in this instance regarding the level of reduction of locally-produced content which should be associated with committing to hourly local news.
- 4.70 Based on the evidence available, we disagree with RadioCentre’s suggestion that the proposal would make no discernable difference in terms of cost savings. Shift patterns vary across the industry, and many stations operate a three or four shift approach to daytime programming (breakfast, drive time, and one or two shifts in between). Under our proposal, stations choosing to move from ten hours to seven hours of locally made programmes could opt to produce only peak time programming directly from the locality they served. Much of the output in between peak time is produced by freelance staff<sup>27</sup>, meaning that stations opting for this approach would most likely make savings, without costs of reducing permanent headcount.
- 4.71 The audience research we carried out previously suggested that audiences expect local programming throughout daytime but particularly at peak times. That is why we amended our localness guidance in 2008 to say that ten hours each day of locally made programmes was a reasonable minimum expectation. The current proposal would still retain local programming at breakfast and for at least seven hours during daytime (ten for those stations not taking up the enhanced news option). We have no further evidence to suggest this level is inappropriate. Reducing the requirement

---

<sup>27</sup> See the 2009 Skillset Employment Census, showing 1,300 freelancers working in radio in production and editorial categories. <http://www.skillset.org/research/index/#c2009>

even further (for example to four hours per day as was suggested by some respondents) would mean that the majority of content during daytime hours, when listeners value localness most, would not be locally produced. Our proposal of a minimum of seven hours retains a large proportion of the locally made programmes which listeners desire, while at the same time offering some cost savings to stations that wish to take up the enhanced news option.

- 4.72 We note the suggestion that no further local news requirements should be imposed upon stations, and that if local stations wish to provide local news then they should be able to do so. We would stress that we are not imposing such a requirement upon any stations – no station will be obligated to change its current service type and level, and it remains a commercial decision for each operator as to whether to request a licence variation in line with our proposal.
- 4.73 Similarly, we may allow particular stations to broadcast less local material and locally produced programmes where, in exceptional cases, particular factors make that appropriate. No licensee would be required to produce more local output than they do currently.

### Conclusion

- 4.74 We will amend our localness guidelines so that any FM station (or FM stations which are allowed to share programming) generally should produce locally made programming<sup>28</sup> for either:
- a minimum of 10 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at peak times, or
  - a minimum of 7 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at least hourly during daytime (weekdays) and weekend peak.
- 4.75 This gives stations the flexibility to reduce the number of local hours produced should they wish and make associated cost savings.
- 4.76 We have updated our localness guidelines and our format change policy (see Annexes 1 and 2), both of which take effect as of 8 June 2010 when the rest of these proposals come into effect. The former includes revised guidance for what constitutes local news, including that it should be regularly refreshed and updated.
- 4.77 Where stations wish to take up the proposal and offer a commitment to an enhanced news service, they will need to request a variation to their licence via a format change to capture the reduction in the number of locally produced hours and the agreement to enhanced news provision. As set out in our revised format change policy (see Annex 2), one of the relevant statutory criteria must be satisfied for Ofcom to consider a format change (it is likely in most cases that adoption of the enhanced news service either would not constitute a substantial change to the character of the service and/or would not narrow the range of programmes available by way of relevant radio services in the relevant area<sup>29</sup>). Where one of these criteria is met, our

<sup>28</sup> Either programming made in the station's licensed area, or within the applicable approved area where the station has requested the appropriate format change (so as, for example, to co-locate with another station in that approved area)

<sup>29</sup> Though, of course, we would consider each case on its merits

policy, as set out in our revised localness guidelines and format change policy, is that<sup>30</sup> we are likely to grant requests for stations to provide enhanced news (and reduce their localness hours as set out above).<sup>31</sup>

## **Proposal 7 – Local programming on AM Stations**

- 4.78 In our July 2009 consultation, we presented evidence of the sharp decline in the audience of local commercial AM radio, and spoke of the potential further decline of AM stations' revenues as a result (over and above the declines in local stations' revenues generally, about which we presented considerable research). This included the fact that of the 25.6 million weekly listeners to local commercial radio only around one tenth (2.9 million adults) listen on AM, and that the majority of the services offered on AM are now simulcast on digital platforms including DAB. Furthermore, as outlined in the Digital Britain Final Report, all listening on AM would cease when the Government's Digital Upgrade policy was implemented.
- 4.79 Given the especially acute nature of the decline in listening to local commercial AM stations, the higher transmission costs these stations face and the inferior sound quality offered on AM, the business model for local commercial AM stations is likely to be vulnerable to greater financial pressures than those for local stations broadcasting on FM. This is particularly the case for services which carry the additional financial burden of simulcasting the service on the local DAB multiplexes.
- 4.80 Taking these viability considerations into account, we suggested that there may be a case to amend our localness guidelines in respect of these services, which currently suggests that four hours of programming a day of locally made programming would be a reasonable expectation.
- 4.81 Instead, we proposed that our guidance would state that generally there need be no local material on AM stations or locally made programmes. However, we did suggest that at least ten hours during weekday daytimes (including breakfast) should continue to be produced within the nation where the station is based (unless the station is already required to do less than this). This is because of the particular value that nation specific content has to citizens and consumers, over and above local content.

### Consultation responses

- 4.82 A number of respondents were in favour of this proposal. However, some such as Town and Country Broadcasting and RadioCentre qualified their support by opposing the requirement for 10 hours of programming during weekdays to be produced within the nation where the station is based. RadioCentre suggested that there was 'an uncharacteristic lack of evidence or argument as to why this is appropriate' and stated that the other measures contained within the consultation would meet the demand for local content in the nations.
- 4.83 In contrast, the Advisory Committee for Scotland noted that AM remained popular in Scotland and welcomed our suggestion of retaining content produced in the nations.

---

<sup>30</sup> Subject to any consultation we are required to carry out (although one would not be required where the change is not a substantial change to the character of the relevant service)

<sup>31</sup> Where or to the extent that this is the only change sought. Where other format changes are sought, such as to the music requirements, we will continue to apply our existing format change policy.

- 4.84 UTV suggested that we consider whether to relax AM stations' obligations to produce content locally on a case-by-case basis, and in particular that London-wide stations should retain a commitment to produce 10 hours of programming a day from London.

### Consideration of responses

- 4.85 We note the support for the main part of our proposal: to amend our localness guidelines for AM stations, such that generally there need be no local material on them or any locally made programmes.
- 4.86 We continue to view the provision of material produced in the nations as having particular importance, linked as it is to one of the public purposes of radio of representing the UK, its nations, regions and communities. In our July 2009 consultation, we presented research conducted by Essential Research in 2007<sup>32</sup> which established that national identity played an important role in many people's sense-of-self in the nations. Given the importance of national identity in the nations, we would argue that, in order for radio to fulfil this purpose, content which is produced in and focused on the nations should be available to listeners based there.
- 4.87 Similarly, MORI's 2004 audience research presented in our July 2009 consultation<sup>33</sup> noted that the BBC's nations' services enjoyed particular popularity. In addition to this, a number of regional stations in Scotland have made a particular strength of regional content and effectively developed into quasi-national stations. Taken together this suggests that in Scotland, Wales and Northern Ireland there is a particular appetite for content produced in and focused on the relevant nation. The response received from the Advisory Committee for Scotland supports this notion.
- 4.88 In response to UTV's submission, we make two points. First, what we proposed is to amend our general guidelines. Individual stations would still need to request a change to their licence conditions on localness and we would consider on case by case basis whether the general guideline should apply to them. Second, we would again stress that we are not imposing the reduction in locally produced content upon any stations – no station will be obliged to change its current service type and level, and it remains a commercial decision for each operator as to whether to request a licence variation in line with our proposal. Furthermore, we have not seen evidence to suggest that local content for London-based services is significantly more valued than in other areas across England, and in any case, when networking most programmes would be likely to be produced in London.

### Conclusion

- 4.89 AM stations generally need no longer produce locally made programming or carry local material. But a minimum of 10 hours during weekday daytimes (including breakfast) should be produced within the nation where the station is based (unless the station is already required to do less than this).
- 4.90 We have revised our revised localness guidelines and our format change policy (see Annexes 1 and 2) accordingly, both of which take effect on 8 June 2010, along with the other provisions and policies in this statement.

<sup>32</sup> *An independent report on localness and local analogue commercial radio*, produced for Ofcom by Essential Research, 22 November 2007, available at <http://www.ofcom.org.uk/consult/condocs/futureradio07/localness.pdf>

<sup>33</sup> *Radio – Preparing for the future: Appendix B*, produced for Ofcom by MORI, 15 December 2004, available at [http://www.ofcom.org.uk/consult/condocs/radio\\_review/radio\\_review2/appendixB.pdf](http://www.ofcom.org.uk/consult/condocs/radio_review/radio_review2/appendixB.pdf)

- 4.91 Where stations wish to take up this proposal, they will need to request a variation to their licence via a format change to capture the reduction in the number of locally produced hours. As set out in our revised format change policy (see Annex 2), one of the relevant statutory criteria must be satisfied for Ofcom to consider a format change for any station<sup>34</sup>. Where one of those criteria is met, our policy is that, subject to any consultation we are required to carry out, we would be likely to allow the requested change where the format of the station will otherwise remain unchanged<sup>35</sup>. We have amended our localness guidance and format change policy to this effect.

---

<sup>34</sup> Again, as set out in section 106(1A) of the Broadcasting Act 1990, Relevant AM stations might, for example, be able to demonstrate that the removal of localness requirements would not narrow the range of programmes available by way of relevant independent radio services to persons living in the relevant area.

<sup>35</sup> Other format changes, such as to a station's music requirements, will continue to be subject to our existing format change policy.

## Annex 1

# Revised localness guidelines

## Analogue Commercial Radio Localness Guidelines

### Introduction

Legislation requires Ofcom to secure that local commercial radio stations provide an appropriate amount of:

- programmes including local material; and
- locally made programmes

and to provide guidelines as to how the above requirements should be met.

These are the required guidelines. They set out Ofcom's general policy in relation to these localness requirements and how we are likely in most cases to apply them to local stations.

Ofcom considers each station on a case by case basis and how, if at all, these guidelines should apply to those stations. The extent to which local material and locally made programmes must be included in the service provided by a licensee is specified in the station's Format (and may vary by station).

How a station produces its locally-made programmes is a matter for each station. For example, there are no restrictions on the amount of automation (e.g. using voice tracking) that a station may use. However, licensees are expected to take into account listeners' expectations and be able to react to events on a timely basis when it comes to automated and live programming.

Localness is not an issue for all stations, but where it is required by a station's licensed Format, it should be informed by these guidelines.

These guidelines are not rules, but they outline the sort of considerations that may come into play if it becomes necessary to investigate a station's localness output. Many of these considerations are based on listener expectations.

### Local material

Section 314 of the Communications Act 2003 defines 'local material' as *material which is of particular interest to those living or working within (or within part of) the area or locality for which the service is provided or to particular communities living or working within that area or locality (or a part of it)*. It can be delivered in a number of ways (local news, local information, comment, outside broadcasts, what's-on, travel news, interviews, charity involvement, weather, local artists, local arts and culture, sport coverage, phone-ins, listener interactivity etc.).

Local news is one of the most important types of local material, and we deal specifically with that below. Subject to what we say about local news, the balance of the different elements of local material outlined is for each station to determine for itself. But, where a station is required to broadcast local material it should include at least some of these elements.

### **What local material is**

We take local material as defined to mean, amongst other things:



- A listener should get a feel for an area by tuning in to a particular station, and have confidence that matters of local importance, relevance or interest to the target audience in the area will be broadcast;
- This should include programming of specific local relevance which also offers a distinctive alternative to UK-wide or nations' service;
- It should include content drawn from, and / or relevant to the station's licensed area;
- Licensees should be able to identify a range of output which is specifically relevant to their local area;
- Programming should be likely to give listeners a feeling of ownership and / or kinship, particularly at times of crisis (snow, floods etc).

#### ***What it isn't***

- Pure promotional off-air activities such as station promotion in the area (vehicles carrying station logos, outside broadcasts, etc.), without on-air activity involving something other than self-promotion, are not in themselves substitutes for local programming;
- Competitions / promotions that invite and involve listener participation from outside a station area would not be regarded as a contribution to localness; and
- Advertisements are not regarded as local programming within the context of localness and Ofcom's localness guidance.

Local material can be delivered in many ways, which are neither mutually exclusive nor individually obligatory. For instance, regular featuring of local music or artists is not a pre-requisite ingredient for the delivery of local material for most stations, but would be regarded as a contribution towards such delivery. Similarly, the organisation of outside broadcasts and the presence locally of promotional vehicles are regarded by Ofcom as important aspects of radio station activity, but could only be regarded as a contribution towards the delivery of local material if such activity manifested itself constructively on-air, as legislation requires Ofcom to consider only what is included in programmes.

#### **Local news provision**

Because of the particular importance to citizens and consumers of local news, all stations required to broadcast local material should broadcast local news at least hourly throughout peak-time both on weekdays (breakfast and afternoon drive) and weekends (late breakfast). Those stations which have committed to an enhanced news service (see below) should broadcast local news at least hourly during daytime on weekdays and throughout peak-time on weekends.

#### ***Local news content:***

- Local news should be high-quality, relevant, timely and accurate, as well as complying fully with the requirements of the Broadcasting Code.
- A station should be able to react on-air to major local events in a timely manner
- Bulletins should seek to reflect the interests and concerns of listeners living in the area.
- Local news stories should be up to date and regularly refreshed
- Local news bulletins should also feature nations' (if relevant), UK-wide and international news.
- The amount of local news, and the balance of local and national news in any particular bulletin, should be subject to professional journalistic judgements, but local news will always be an essential characteristic of a local station's overall output.

- Simply localising UK-wide news (e.g. conducting vox pop interviews in one area and playing them out as if from another or inserting local place names into UK-wide stories) without local news / information generation would not be regarded as a contribution towards localness or fulfilling local news requirements.

### ***Local news production:***

- Any group of stations may choose to pool their news resources and operate one or more 'news hubs' in a way which makes operational sense for them. However, in order to provide a comprehensive local news service in touch with the area it is covering, each station should have direct and accountable editorial responsibility for covering its licensed area.
- There should be an appropriate provision of professional journalistic cover, based within the licence area (or approved local area if appropriate), on days when local news provision is a Format obligation.
- The pre-recording of news bulletins should be an exception rather than a rule and peak-time bulletins should always be broadcast live (or pre-recorded only shortly before transmission).

### **Locally-made programmes**

Where a station is required to broadcast programmes including local material a suitable proportion of them (as determined by Ofcom) must be locally-made programmes. Locally-made programmes are those made within a station's licensed area or, where Ofcom has approved an area relating to that station, that approved area.

As we indicate above, the following sets out Ofcom's general guidelines about the amount of locally-made programmes including local material that stations should broadcast. They set out what we are most likely to expect stations to broadcast, but we consider each station on a case by case basis and how, if at all, these guidelines should apply to those stations. The requirements for each station are then built into its Format and it must deliver at least the level of locally-made programmes specified there.

While stations are free to network programmes outside the requirements regarding locally-made programmes in their Formats, they should still be able to respond to local events in a timely manner, providing live local programming in the way and at times that audiences expect.

### ***FM local stations***

Generally, each FM station should produce a minimum of 10 hours a day of locally-made programmes during weekday daytimes (this should include breakfast).

However, where an FM station provides an enhanced news service, of local news at least hourly during daytime on weekdays and at weekend peak times, that station should produce a minimum of 7 hours a day of locally-made programmes during weekday daytimes (this should include breakfast).

Accordingly, where their Formats currently require them to produce a minimum of 10 hours a day of locally-made programmes during weekday daytimes stations may request a change to a minimum of 7 hours (in return for providing an enhanced news service). Where one of the relevant statutory criteria (in sections 106 and 106(1A) of the Broadcasting Act 1990) is

met, we are, subject to any consultation we are required to carry out, likely to allow such changes on condition of providing the enhanced news service.<sup>36</sup>

Whether they provide an enhanced news service or not, each station should produce a minimum of 4 hours a day of locally-made programmes at weekends (in daytime).

In each case, the locally-made programmes should include local material across the stated minimum hours as a whole, although local material need not be included in each of those individual hours if this is not appropriate.

In exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station, and so have to provide less local material and less locally-made programmes than these guidelines suggest, Ofcom will consider such requests on a case-by-case basis.

(Daytime is defined as 0600 to 1900 both weekdays and weekends. Peak time is defined as weekday breakfast and drive time, and weekend late breakfast.)

### **AM local stations**

AM stations generally need not produce locally-made programmes nor broadcast local material. But, each AM station should produce a minimum of 10 hours of programmes during weekday daytimes from within the nation where the station is based.

AM stations currently required by their formats to produce locally-made programmes and broadcast local material may request changes in line with the above guideline. Where one of the relevant statutory criteria<sup>37</sup> is met, our policy is that, subject to any consultation we are required to carry out, we would be likely to allow the requested change where the format of the station will otherwise remain unchanged.<sup>38</sup>

(Daytime is defined as 0600 to 1900.)

### **Co-location and programme sharing**

As we indicate above, locally-made programmes are those made within a station's licensed area or, where Ofcom has approved an area relating to that station, that approved area. A station's format will indicate where it must make its locally-made programmes.

Ofcom has defined a set of approved areas, based on local affinities, existing transmission areas and station scale / viability considerations within which these programmes may be made. Stations may request changes to their formats, so as to co-locate and/or share programming with other stations within these approved areas (i.e. with which they share an approved area).

One of the relevant statutory criteria<sup>39</sup> must be satisfied for Ofcom to consider any such format change. Subject to any consultation we are required to carry out,<sup>40</sup> Ofcom will be likely to consent to such requests<sup>41</sup> provided we are satisfied that the stations involved will

---

<sup>36</sup> Where or to the extent that this is the only change sought. Where other format changes are sought, such as to the music requirements, we will continue to apply our existing format change policy as currently

<sup>37</sup> Again, as set out in section 106(1A) of the Broadcasting Act 1990, Relevant AM stations might, for example, be able to demonstrate that the removal of localness requirements would not narrow the range of programmes available by way of relevant independent radio services to persons living in the relevant area.

<sup>38</sup> Other format changes, such as to a station's music requirements, will continue to be subject to our existing format change policy as currently

<sup>39</sup> Again, in section 106(1A) of the Broadcasting Act 1990. One of these is that the change involves a change in the place the station's programmes are made, from one within its licensed area to one in the relevant approved area, so this will be met in appropriate co-location cases.

<sup>40</sup> We would not be required to consult on requests to co-locate within approved areas, but may be required to do so on programme sharing requests.

<sup>41</sup> Where or to the extent that they relate only to localness matters (e.g. for co-location and programme sharing (that does not involve Character of Service changes, such as to music requirements) within the relevant approved area). Where other format changes are sought, such as to music requirements in Characters of Service, we will continue to apply our existing format change policy.

continue to meet their licence obligations to provide local material relevant to the listeners in their individual licensed areas. Further guidance on applying for co-location / programme-sharing within approved areas can be found within our Format change policy.

Stations that do not fall within the same approved area may still apply for co-location and/or programme sharing; in deciding whether to consent to such requests the sort of factors Ofcom will take into account are:

- Size of station: there may be stronger case for co-location and/or programme sharing where at least one of the stations has a licensed area with a population of fewer than 250,000, and especially those under 100,000, although we would not rule out requests from larger stations in exceptional circumstances.
- Distance and affinity between the areas: there is likely to be a stronger case for co-location where the stations concerned are not too far apart geographically and are able to demonstrate a cultural affinity between the two areas.
- Financial: there may be a stronger case for co-location where stations can demonstrate that co-location is required to ensure the financial viability of the stations concerned.

However, there may be other factors to be taken into account, and Ofcom will treat each out of area request on a case-by-case basis, consulting in each instance. Ofcom does not rule out allowing co-location for larger stations in exceptional circumstances.

The decisions as to whether to allow co-location and/or programme sharing are independent of each other.

#### **‘Regional’ stations and programme sharing**

Where certain ‘regional’ analogue stations, shown in the following list provide a version of their programme service nationally on DAB, our policy is that they should not generally be required to broadcast local material and locally made programmes, in effect allowing them to become national DAB stations with partial national coverage on FM. However, because of the importance of nation-specific content in the devolved nations, any regional stations in those nations will still be required to produce nation-specific programming as per the guidelines for local FM stations.

**Figure 4: Regional FM stations**

Station	Region(s)	Owner
Absolute Radio	London	TIML
Capital Radio	London	Global Radio
Galaxy	North East, Central Scotland, Yorkshire	Global Radio
Heart	London, East Midlands, West Midlands	Global Radio
Kerrang!	West Midlands	Bauer Media
Kiss	London, East of England, Severn Estuary	Bauer Media
LBC 97.3	London	Global Radio
Magic	London	Bauer Media
Nation Radio	South Wales	Town & Country
Real Radio	Central Scotland, North East, North West, Yorkshire, South Wales, North & Mid Wales	GMG Radio
Smooth Radio	London, East Midlands, West Midlands, North East, North West	GMG Radio
The Coast	Solent	Celador
Wave 105	Solent	Bauer Media
XFM	London	Global Radio

Source: Ofcom

This is an exception to the general approach on local material and locally-made programmes outlined above. It reflects that these ‘regional’ stations are those which are generally focused on providing an extension of music choice, as well as the required locally made programming and local (regional) material. As a result, they are more apt to be given the flexibility to become like national stations, to create greater competition and choice at the national level, by freeing them from obligations to broadcast local material and locally made programming.

These regional stations may request a format change to remove their localness obligations, allowing them to share all their programming in this way. Where a relevant statutory criterion is met,<sup>42</sup> and subject to any consultation, Ofcom would be likely to consent to this where those stations will provide a version of the shared programming service nationally on DAB.<sup>43</sup>

Where these stations will provide such a DAB service, we will amend the format in their licences so that they are required to provide that service (including a requirement to provide a specified level of ‘national’ coverage) in return for the reduction in localness obligations (the reduction in those requirements being dependent on maintaining the specified level of ‘national’ coverage).

If the regional stations serving South Wales and North & Mid Wales wish to combine their programming to form a national service for Wales in return for also providing that service on local or regional DAB multiplexes which cover Wales, we would consider such a request and reserve the right to consult before making a decision. Due to the specific needs of the

<sup>42</sup> in section 106(1A) of the Broadcasting Act 1990.

<sup>43</sup> Again, this is our policy where or to the extent that the change sought relates only to the provision of a national DAB service and the removal of localness requirements. Where other format changes are sought, such as to music requirements, we will continue to apply our existing format change policy.

nations, regional stations in Scotland and Wales should have to retain their specific nation focus for a number of hours a day (in line with the guidelines for large local stations).

As part of any request, it will be for each station to make proposals as to the extent of the population coverage on DAB they will provide, and to satisfy us that we should regard it as 'national.' In line with precedents on DAB, we are likely to view 70% coverage level at launch, rising to over 80% within three years, as an acceptable suggestion. We also remain open to other coverage level suggestions, provided that stations accompany their request with justification as to why the threshold suggested can be considered to offer increased choice and competition to consumers on a 'national' scale. We reserve the right to consult on requests

If any individual local stations (not on the list of qualifying 'regional' stations) wish to be considered as part of a service broadcast nationally on DAB, on the basis of the specialist nature of their format, and to have their localness obligations reduced accordingly, they may make an appropriate format change request to us. We will consider each case on its merits and would consult on a case by case basis. Ofcom would, however, expect such stations to satisfy us that they share the more specialist music characteristics of the relevant regional stations, as opposed to being focused primarily on providing locally made programming and local material, and that the rationale for our policy also applies to them.

***[NB – the above revision takes effect on 8 June 2010]***

## Annex 2

# Revised format change policy

### The regulation of Format changes

There will always be occasions on which radio station Formats need to change. Radio is an evolving industry and listeners' preferences and interests are changing, although Ofcom has certain statutory duties with respect to Formats and can only consent to changes in limited circumstances (where statutory requirements are met).

Formats include requirements relating to:

- music output
- news provision
- other types of speech content
- amount of locally-made programmes
- co-location arrangements
- programme sharing arrangements

The section of the Format labelled specifically as the 'Character of Service' represents a high-level summary of a station's character of service, but it is those elements listed above which are included in any given Format (not all of the elements listed above will be relevant to each station) which, taken together, constitute a station's overall character of service.

### Statutory requirements

Section 106 of the Broadcasting Act 1990 (as amended) sets out the circumstances in which Ofcom may consent to a departure from the Format of a service. One of five grounds specified in the Act must be met for Ofcom to be able to consent to the change:

*a. that the departure would not substantially alter the character of the service. (Note: The legislation requires Ofcom to have regard to the selection of spoken material and music in programmes when determining what the character of the service in question is.);*

*b. that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;*

*c. that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality*

*d. that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or*

*e. that, in the case of a local licence-*

*(i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but*

*(ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

Under section 106ZA of the Broadcasting Act 1990, Ofcom is required to hold a public consultation on a proposed Format change unless it considers that either criterion a. or e.,

as set out above, is satisfied. This means that, unless the request relates to a change to a station's location within an 'approved area'<sup>44</sup> (e.g. a request for co-location with another station within that area), Ofcom must first decide whether a proposed change would "substantially alter the character of the service".

It is difficult to provide exact definitions of substantial in this context but, as a guide, the simplest test for a substantial change would be if the summary 'Character of Service,' as specified and labelled as such in the Format, required a change in wording. This would undoubtedly signal such a fundamental change, but that should not be the only type of change that could be regarded as substantial.

Another example of a proposed change to a Format which Ofcom would be likely in most cases not to consider substantial is where a licensee requests a change in its locally-made programmes requirements in return for providing an enhanced local news service.<sup>45</sup> Similarly, it is also possible that a format change involving only programme sharing with another local station in an 'approved area,' but no other changes to a station's summary 'Character of Service,' would not involve a substantial change.

### **Ofcom's discretion**

It is important to note that the legislation leaves to Ofcom's judgement the decision as to whether to permit a change, even if one of the statutory criteria is satisfied. We are likely to exercise any such discretion in different ways depending on whether the change sought relates to the localness aspects of a station's format or to the summary 'Character of Service' set out in it. In either case, we would also consider our general duties relating to radio services.

### **Changes to summary 'Character of Service'**

**If a relevant statutory criterion is met, Ofcom applies the following criteria against which to judge whether a request of this kind should be approved or not:**

**The extent of the impact of the change on the character of the service .** The judgement will be made on the basis of the overall "sound" of the station. Making this assessment may require the station's content to be evaluated in detail in the context of the Format.

**The time elapsed since the licence was awarded.** Ofcom recognises that audiences change over time, and that stations need to adapt in parallel. As digital listening increases, the pace of change in the market is also increasing and so analogue stations may need to be more adaptable than previously. Consequently, a station's request to modify its Format is likely in general to be considered positively in the light of changing listener demands. However, a change soon after licence award (or re-award, in the case of a re-advertised licence) would be inconsistent with the licensing process whereby stations define their own Formats in their licence application. Ofcom will therefore expect a stronger case to be made for changes that are requested within two years of launch (or commencement of a new licence period) than for stations which have been established for a longer period. For example, Ofcom would be unlikely to allow a complete change of character of a service within two years, but smaller changes may be allowed. No substantial changes to a Format will be made without a formal consultation, as required by the legislation. None of the above guidelines will be affected by any changes in ownership of a radio station.

**Considerations taken into account in making the original award.** Where the original decision to make the award depended heavily on a specific commitment in the proposed Format, then Ofcom is likely to be reluctant to allow the change.

<sup>44</sup> See Ofcom's localness guidance

<sup>45</sup> Ibid.



**The views of listeners and stakeholders.** Where Ofcom issues a consultation about a proposed change, the views of listeners and stakeholders will be fully taken into account.

**The avoidance of 'Format creep'.** Ofcom will be alert to the possibility that a series of small changes to a Format could in aggregate amount to a substantial alteration to the character of a service. Consequently Ofcom will take into account the effect of a proposed change in the context of previous changes.

**Whether the station broadcasts on AM or FM.** Ofcom has long recognised that AM stations are at a disadvantage in retaining listeners because of the relatively poor technical quality of the medium. Changes, including substantial changes, to AM station formats, will therefore be more willingly agreed than would be the case for FM stations.

**In addition, Ofcom may need to consider other statutory obligations in relation to a particular decision.** For example, a proposed change to the summary 'Character of Service' that also affects the amount of local material or locally-made programmes would have also to be considered in light of Ofcom's localness obligations under section 314 of the Communications Act., and our published localness guidance.

### **Changes to localness aspects of a station's format**

Licensees may also request format changes that relate to the localness aspects of their format (e.g. the amount of local material and/or locally made programmes they must broadcast). Where they do, and the change relates only to these localness aspects (or to the extent that it does), we are likely to grant such requests in accordance with the policy set out in our localness guidance. Requests falling within this category include (as set out in the localness guidance):

- **Regional stations requesting to share programming and become national stations**
- **Local stations requesting location changes (e.g. co-location) within approved areas**
- **Local stations requesting programme-sharing within approved areas**
- **Local FM stations requesting an enhanced news option in return for a reduction in locally made programme hours**
- **Local AM stations requesting a removal of localness requirements**

**If a station is considering applying to change its Format, it may wish to contact Ofcom colleagues for advice as to what specific information would be required to support its case for change. This is likely to vary on a case-by-case basis.**

Please submit any Format change requests using the format change request form.

***[NB – the above revision takes effect on 8 June 2010]***

## Annex 3

# Consultation responses

- A3.1 By the closing date of 23 October 2009, 26 responses had been received: 17 corporate and 9 from individuals. Non-confidential versions of these responses were made available on the Ofcom website upon receipt. No fully confidential responses were received.
- A3.2 A number of the main points raised by respondents on the consultation proposals are collated and summarised, along with Ofcom's response, in Section 3 above.
- A3.3 The following tables set out more fully the points raised by each individual respondent in relation to the consultation proposals. We note where an issue has been covered within Section 3 of the statement. In general, we have not included expressions of support, although we have, of course, taken these into account.

## Proposal 1

- A3.4 We proposed that regional analogue stations (as defined by Ofcom in Figure 1) should be able to request to share all their programming, and that we may consent to this where those stations provide a version of the shared programme service nationally on DAB. Where they do, our guidelines would be that they should not generally be required to broadcast local material and locally made programmes. Otherwise, such regional analogue stations would be treated as large local FM stations and the relevant rules would be applied.
- A3.5 Due to the specific needs of the nations, we proposed that regional stations in Scotland and Wales should have to retain their specific nation focus. In Wales, where there are separate regional services for South Wales and North & Mid Wales (not yet launched), we suggested that these could combine to form a national service for Wales, provided that service was carried on either a national DAB multiplex or all local DAB multiplexes in Wales.

Respondent	Comments	Ofcom's response
RadioCentre	Believes that the industry requires a more workable definition of what would constitute a national network in the future.	We respond to this in the statement
	Disagrees with the application of the proposal only to its current list of regional stations. Suggests that the approach is "overly restrictive and anomalous", with no incentive for local brands such as Galaxy and Smooth to grow.	We respond to this in the statement
	Questions whether the nation-based focus of	We respond to this in the

	regional stations should be enshrined within the regulatory framework, viewing a potential danger of disincentivising music-based stations whose national content is less significant from becoming UK-wide brands	statement
<b>Radio Independents Group</b>	Notes a distinction between locally made content and content which is exclusively local in scope. Regards the former as continually important and therefore proposes safeguards against a concentration of production in a certain region. This would reach out to communities, save costs and provide a diverse range of content on commercial radio.	We share the belief that locally made content remains continually important, as evidenced by the research contained in the consultation. However, we do not believe prescriptive regulatory rules on this point would be appropriate. Moreover, there may be questions as to whether such safeguards could be enacted via current legislation.
	Favours opt-outs such as regional investigative documentary strands.	There are no requirements in stations' Formats to provide regional investigative documentary strands and Ofcom has no power to impose these. Stations would not be prevented from elective opt-outs.
<b>Arqiva</b>	Believes that it should be a matter for a regional service to decide how best to achieve their national footprint, be it through carriage on the national commercial DAB multiplex or a mixture of local and regional DAB multiplexes.	We respond to this in the statement
<b>Town and County Broadcasting</b>	States that "national coverage should be assessed as per the Myers Review. i.e. 65% coverage and not just on a 'national' or UK-wide multiplex".	We respond to this in the statement
	Suggests that stations in the nations should not be restricted and should be allowed to be UK-wide. Highlights that the BBC does	We respond to this in the statement

	not apply this thinking to its national services.	
	Argues that all format regulation should be abolished for all stations	Ofcom does not have the power to do this
<b>UKRD Group Limited and The Local Radio Company</b>	Disagrees that sharing programmes at regional level should only be permitted with a version of the service being carried on a national multiplex. Suggests that services are “music-brand-led radio offerings and whether they are on a national multiplex or not, they should be permitted to share their programming as appropriate to their needs”.	As outlined in the consultation, there is a balance to be struck on this issue. We believe that, if these stations were given the flexibility to become national stations, this could create greater competition and choice at the national level: a significant benefit to citizens and consumers. Freeing these stations from obligations to provide locally made programming and regional speech content, in return, is a way of giving these stations an incentive to make the necessary investments.
<b>Folder Media</b>	Believe that a minimum of 65% adult population should be covered for services to be considered national.	We respond to this in the statement.
	Suggests that where a station adopts a national approach then regional programming should not be an option, only spot advertising.	We do not believe that restricting stations’ ability to offer opt-out regional programming would be in keeping with the public purposes of radio. Listeners value local content, and it would be inconsistent to actively regulate against this provision
	States that services in the nations should be carried on regional or local multiplexes rather than national ones.	As highlighted within the consultation, we would expect services in the nations to either acquire carriage on a national DAB multiplex or all local DAB multiplexes in that nation. We have no power to require them to provide services on any particular multiplex nor require any particular multiplex operator to carry

		the services.
<b>UTV</b>	Urges against any further national services beyond the regional FM services listed in the consultation.	At present we only plan on offering the option to those stations listed in the statement. Were we considering that the policy should be extended to any other stations we would consult on this point. We would also take this opportunity to note that, while a station may be freed from its requirements to provide local material and locally produced programming, we would not necessarily anticipate any other change in format in any instance (although a licensee could apply and we would consider it under our format change policy). Regarding further national services, Ofcom has a duty to promote competition and Digital One specifically exists to provide national services, some of which have newly launched since we published our consultation.
<b>BECTU</b>	Believes that the possible loss of local (regional) programming which consumers may value is indeed a significant drawback when set against the “dubious commercial benefits of shared programming”.	<p>The evidence set out in our consultation suggests that the benefits of shared programming for regional stations are significant. In particular, stations taking up the proposal would encourage choice and competition on a national scale. We further believe that there is significant provision for local content that consumers may value through the local commercial radio sector.</p> <p>In any event, in conjunction with our other proposals, especially 2 and 5, relevant stations will still be able to broadcast provide local material even when they take</p>

		advantage of this proposal.
<b>Merevale Media Services</b>	Queries how the local flavour of stations would be retained.	The possibility of regionalised opt-outs would give stations an option to retain a regional flavour, and we anticipate that some stations taking up the option would choose to do so for commercial reasons. We would not however compel stations to carry such content.
<b>Ofcom Advisory Committee for Scotland</b>	Suggests seeking an incentive to encourage a regional Scottish service to secure carriage on local commercial multiplexes, which currently have several unused slots.	A licence for a second single national multiplex will not be advertised in the short-term. We therefore believe there is incentive for operators in Scotland to secure carriage on local multiplexes, given that this represents the quickest route to achieving coverage on a national scale
<b>Welsh Language Board</b>	Believes that any Welsh services which take up the option outlined in the proposal should have as a requirement to provide Welsh language services	The proposal is based around the level of localness that stations should be required to maintain. In this instance, a requirement to provide Welsh language services would involve a change in station format for any applicant. Ofcom has no power to impose programming obligations on stations. It may only consider changes requested by licensees.
<b>Individual respondents</b>	We also received responses to this proposal from some individuals. One described this proposal as “pointless,” because national services should be unique not copies of local ones. Others made a number of points overlapping with those from other respondents and described elsewhere in this document.	We consider that our proposal offers the prospect of increased competition and choice in national services, whilst maintaining a diversity and ubiquity of local services. We respond to the points made by a number of respondents elsewhere in this document

## Proposal 2

- A3.6 The July 2009 consultation proposed that the six existing regional multiplexes (plus one of the three London multiplexes) should be allowed to combine and extend their areas to form in effect a national multiplex with the ability to offer regional opt-out programming and advertising.
- A3.7 This proposal was contingent on relevant legislation being passed to grant Ofcom the necessary powers. The power formally to merge regional licences into a new national licence is not included in the Digital Economy Act and so we cannot proceed on this basis.
- A3.8 The Digital Economy Act allows Ofcom to vary the frequency, or extend or reduce the coverage area, of a local radio multiplex licence. We therefore have the power to achieve our proposal 'in effect' – by allowing the extension of coverage to the existing regional multiplexes, so that they could come to a commercial arrangement along the lines described. However, frequency availability may limit the extent of this coverage, preventing it from become a 'national' multiplex, 'in effect.'

Respondent	Comments	Ofcom's response
<b>RadioCentre</b>	States that new legislation should be seen as freeing multiplex operators from obligations rather than compelling them to take a certain course of action.	We respond to this in the statement
<b>Folder Media</b>	Does not agree that services on a national multiplex should be able to offer regionalised opt-outs for programming, stating that "such a proposal goes against the argument of having more national services (if in reality they remained regional services) and could affect the commercial viability of local DAB multiplexes"	We do not believe that restricting stations' ability to offer opt-out regional programming would be in keeping with the public purposes of radio. Listeners value local content, and it would be inconsistent to regulate actively against this provision. We respond to the concerns over the viability of local DAB multiplexes in the statement.
<b>Arqiva</b>	Highlights that the costs and infrastructure to provide opt-outs on DAB may be high when compared with a similar full-national network like Digital One, and that stations will need to balance the additional infrastructure costs against the revenue benefits they would gain from being able to regionalise	Stations have argued that they would prefer to see a national network which has the possibility of offering regional advertising, although they recognise there are significantly greater costs in building such a network compared to a single frequency network. However, such a network

	their output.	could be partially built out of expanding existing regional infrastructure. The alternative approach of carriage on a combination of local and regional multiplexes would by its nature allow opt-out regionalised programming at a limited cost.
<b>Christian Broadcasting Council</b>	Suggest that a regionalised D2 should include the Channel Islands	This would depend upon frequency availability and the commercial operators interest in extending to the Channel Islands. This is not a question we can answer at this stage.
<b>UKRD and The Local Radio Company</b>	Suggests that the proposal “will inevitably result in a diminution of locally/regionally based programming capacity and the undermining of the capacity of the commercial sector to hold and grow its market share in the local radio marketplace; its greatest strength”.	We respond to this in the statement.
<b>BBC</b>	Expressed concern about the possible detriment to local multiplexes from any increase in the scope of ‘regional’ multiplexes, highlighting that BBC locals and specifically ‘local’ stations may be the only stations carried on such services (and in turn face higher costs).	We respond to this in the statement.
<b>Individual respondents</b>	Individual respondents to this proposal were either broadly supportive of it, or made comments that overlap with other respondents.’	We respond to the points made by a number of respondents elsewhere in this document.

## Proposals 3 and 4



A3.9 We proposed that we would define a set of areas covering the UK, taking into account existing transmission areas, scale/viability, and local affinities. Within these approved areas, stations would be able to request to co-locate (and produce their 'locally made' programmes). Stations would also be able to request to share all of their programming, effectively allowing them to come together to become larger, more viable stations. Provided the relevant statutory requirements were met, we would be likely to consent to either of these requests. Outside the approved areas, we would continue to consider requests for co-location and programme sharing on a case-by case basis using the existing criteria of size, affinities and financial viability.

A3.10 Proposals 3 and 4 are part of a package, and most respondents treated them as such. However, some treat the two proposals separately. In the table below, where relevant we indicate explicitly which proposal is being referred to.

Respondent	Comments	Ofcom's response
<b>RadioCentre</b>	Believes that the approved areas should be based on either ITV or BBC local regions, given that these have been "designated as being appropriate for broadcasting purposes"	We respond to this in the statement.
	Suggests that all stations with an MCA of less than 1 million should be able to co-locate with stations in neighbouring areas (provided they remain within the nation)	This would amount to an expansion of the approved areas, and we respond to this in the statement
	Believe that it would be more transparent and objective to state that consent will always be approved, unless the criteria has <i>not</i> been met or there is a specific reason relating to licence obligations of the station.	We suggest in the statement that we would be 'likely' to consent where statutory criteria has been met and other relevant licence obligations would continue to be met. This reflects what our general policy as to the exercise of our discretion will be – which should reassure licensees. However, we cannot lawfully fetter our discretion in the way the response demands.
	(Proposal 4) Expresses concern at the suggestion that short consultations will be necessary.	We would need to consent to a licence amendment from the relevant parties. However, we would be likely to consult only if the proposal for programme sharing falls across the boundaries of

		approved areas, or requires a substantial change in the character of the stations involved (where consultation would be a legal requirement).
<b>UTV</b>	Does not believe that reference to approved areas is the most optimal way of delivering the objectives for the local commercial radio sector, suggesting that legislation allows for regulation to focus solely on 'output' legislation (i.e. the content of programmes rather than where they are produced)	We consider that what we proposed, and now adopt, reflects the relevant legislative provisions – which regulate input and output – and Ofcom's general duties in applying them. The Digital Economy Act 2010 provides the mechanism for implementing this policy, and makes explicit reference to 'approved areas.'
	Suggests that different methods may be applicable for smaller local stations (i.e. under 700k MCA), and in particular that emphasis on studio location is not required for these stations, who are commercially incentivised to put local content at the centre of any of their output.	We believe that a standardised regulatory approach to local stations is simpler and clearer, as well as, for the reasons we have set out, an approach that best balances meeting our statutory duties and the value, to citizens and consumers, of localness, with the need to help secure the viability of local stations.
	Suggests that BBC TV regions should be adopted as the approved areas.	We respond to this in the statement.
	Suggests that approved areas would be permitted to have overlapping zones, but that these would not be applicable for 'larger' stations who would have to remain in one approved area. Would retain co-location in exceptional cases.	We respond to this in the statement.
<b>BECTU</b>	"Totally opposes" any proposal to remove all localness regulations and remains "extremely cautious" about co-location and programme-sharing proposals. (The same response also refers to	We highlight in the statement the importance of local content to listeners, and share a desire to retain this element. As stated in our proposals, to allow relevant co-location and programme sharing requests we would

	proposal 7 below)	have to be satisfied that the stations involved would continue to meet their licence obligations to provide local material relevant to listeners in their licensed areas.
<b>Town and County Broadcasting</b>	Indicates existing ITV regions would be preferred as approved areas, with the Ofcom proposals being “inconsistent in population size, and in some cases do not make much geographic or commercial sense”.	We respond to this in the statement.
<b>Ofcom Advisory Committee for Scotland</b>	States that local stations in Scotland are much more viable than their urban counter-parts and are likely to remain so, and therefore argue that there is not the same requirement to ease pressure by offering co-location and programme sharing over such a wide area.	We respond to this in the statement.
	Raises the concept of ‘affiliated stations’ – where small rural stations with limited resources who want to remain independent and local can enter into an affiliation agreement with a larger neighbour or group without giving up control – and asks Ofcom to make it clear that this is a desirable model which we would accept and consent to.	The proposals as set out in the consultation do not require common ownership of stations wishing to co-locate or share programming. This policy therefore allows for affiliated stations, should any operators wish to pursue that approach.
<b>Ofcom Advisory Committee for Wales</b>	Broadly welcomes proposal 3, but is “concerned that the north and mid Wales area is very large geographically”.	Permission has recently been given for Radio Ceredigion, which is the only FM local station in mid-Wales to co-locate with Radio Pembrokeshire in Narberth. The Advisory Committee for Wales approved of this change. We therefore believe this concern no longer exists.

	<p>On Proposal 4, suggests there is a risk that the local content of stations within these macro areas could be diluted, with programme sharing across cultural and economic environments, and states that re-locations of this kind should “only be acceptable as a last resort if it was apparent that without such a move a station would go off the air”.</p>	<p>As the response also acknowledges, the policy as set out in the statement makes explicit mention of ensuring that stations involved would continue to meet their licence obligation to provide local material relevant to listeners in their licensed areas. We believe that this will guard against any dilution of localness that may arise through programme sharing.</p>
<b>BBC</b>	<p>Suggests that “there would appear to be no reason why content for any particular local area should have to be made in that area - particularly in the light of advances in content production and communications technology”.</p>	<p>The research we set out in our consultation demonstrated that listeners value local content, and that this content is more distinctly ‘local’ in nature when produced in the same locality. We note that all BBC local stations continue to maintain studios and produce programmes from within their editorial areas.</p>
<b>Individual respondents</b>	<p>Again, individual respondents to this proposal made a number of comments that overlap with other respondents.’</p> <p>They also made comments that these proposals should be conditional on the release of additional FM frequencies. One said that, if these proposals are necessary to sustain local radio services, they should also be capable of reversal (for example when licences come to be re-advertised) if the commercial landscape for radio improves.</p> <p>One individual respondent said all stations should be free to network all their output across the UK and, where they do, should be free to locate anywhere in the UK.</p>	<p>We respond to the points made by a number of respondents elsewhere in this document.</p> <p>As to the comments about additional frequencies, none are currently available.</p> <p>We agree that new and different licence conditions could be imposed when a licence comes to be re-advertised.</p> <p>As to the comments about UK-wide networking and location, we consider them to be inconsistent with our statutory powers and duties and the strong evidence of the citizen and consumer value of local material and programming.</p>

## Proposal 5

A3.11 The Digital Economy Act grants Ofcom the powers to vary the frequency or extend or reduce the coverage area of a local radio multiplex licence, at the request of the multiplex operator and following public consultation. This in turn allows us to be able to align the frequencies of adjacent multiplexes (provided they carried the same programme services) so as to improve coverage now or make future expansion of coverage more effective.

A3.12 We therefore proposed that, within the approved areas, local multiplexes should be allowed to merge, including by sharing frequencies (if possible), and be extended into any un-served localities within that area, where Ofcom consider that appropriate. We envisaged short consultations in most cases

<b>Respondent</b>	<b>Comments</b>	<b>Ofcom's response</b>
<b>RadioCentre</b>	Welcomes the power to enable local multiplexes to merge and extend areas within the approved areas, but stresses that this should be the removal of a regulatory barrier rather than a policy to be imposed.	Multiplex operators would not be compelled to take advantage of the new legislative provision. They would need to make requests to Ofcom to change their frequencies and licensed areas. Whether they do so is for them to decide.
<b>Folder Media</b>	Views this proposal as the removal of a potential legislative obstacle, and argues against the creation of any obligations on multiplex owners while stressing that the decision to combine multiplexes must be a result of a commercial decision.	We respond to this in the statement
<b>Christian Broadcasting Council</b>	Makes suggestions as to multiplex extensions and potential mergers	Applications for extensions to the licensed areas or frequency variations are commercial decisions to be taken by multiplex operators.
<b>UKRD</b>	Believes that this proposal will endanger the long term future of some local stations and so if the merger of local multiplexes is to take place, then there must be	We respond to this in the statement

	opportunity for operators to provide a service to a smaller transmission area within the larger area intended.	
<b>Ofcom Advisory Committee for Scotland</b>	Supports the proposal and would welcome incentives which encourage the coverage of non-served areas.	Take-up of the proposal will be at the discretion of the multiplex operators, and we believe that there are existing commercial incentives for operators.
<b>Individual respondents</b>	<p>Once more, individual respondents to this proposal made a number of comments that overlap with other respondents.' For example, a number referred to the possible negative effects on smaller local stations.</p> <p>One said Ofcom should look to merge all local and regional multiplexes into national ones by 2020.</p>	We respond to the points made by a number of respondents elsewhere in this document. As to the comments about merging all local and regional multiplexes we do not have the legal power to do this.

## Proposal 6

A3.13 Any FM station (or FM stations which are allowed to share programming) generally should produce locally made programming for either:

- a minimum of 10 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at peak times, or
- a minimum of 7 hrs/day during weekday daytimes (including breakfast) and a minimum of 4 hrs/day at weekends during daytime plus local news at least hourly during daytime (weekdays) and weekend peak.

A3.14 Where stations wish to take up the proposal and offer a commitment to an enhanced news service, they will need to request we would anticipate a variation to their licence to capture the reduction in the number of locally produced hours and the agreement to enhanced news provision.

<b>Respondent</b>	<b>Comments</b>	<b>Ofcom's response</b>
<b>RadioCentre</b>	Suggests that "where a station is required to provide 10 hours of locally-made programming out of 13 daytime hours the trend has	We respond to this in the statement.

	often been towards two 5 hour shifts with a 3 hour networked show”, and consequently does not envisage savings to be made from a reduction in the number of locally-produced hours along these lines.	
	Suggests that the ‘standard’ should be set at 7 hours of locally-made programming, reducing to 4 hours where local news is committed to.	We respond to this in the statement.
	Suggests that locally produced hours should not be prescriptive in when they have to be broadcast (e.g. there should not be a requirement for them be at breakfast)	We respond to this in the statement.
<b>Town and County Broadcasting</b>	The addition of any local news requirement is labelled as ‘totally unnecessary’, and it suggests that local stations which want to provide local news should be able to do so.	We respond to this in the statement.
<b>Radio Independents Group</b>	Would like to see consideration to including an obligation for a certain amount of local current affairs / investigative documentaries to be provided alongside local news.	The research we set out in our consultation demonstrated that listeners value a variety of local content, but in particular information such as local news, travel and weather. Current affairs was less highly valued. Ofcom has no power to impose specific programming obligations on stations. It may only consider changes requested by licensees
<b>Advisory Committee for Scotland.</b>	Urges Ofcom to remain vigilant regarding the use of ‘news hubs’, suggesting that “where they are used to free local journalists to generate news rather than being chained to a rigid studio news-reading schedule, they can work	We acknowledge that news hubs are one method stations may use to meet their licence obligations. News hubs are already allowed under the existing regulatory framework.

	well”.	
<b>BECTU</b>	Questions the rationale of reducing local content to 7 hours where an enhanced news service is taken up, given that this is “largely undefined” and may not be expected to afford greater viability.	<p>We have issued revised guidance about how we consider news should be provided. We consider that the standard news approach (local news being broadcast during peak times) is sufficiently differentiated from the enhanced news approach (where regularly refreshed and updated local news must be broadcast at least hourly).</p> <p>We acknowledge the point regarding the impact on viability, but would highlight that viability is not the sole focus of this proposal. Since local information such as news has been shown to have been of significant value to citizens and consumers, the proposal brings citizen and consumer benefits alongside modest cost savings for station operators.</p>
<b>Individual responses</b>	One respondent said news on local radio is so poor that any requirement for it should be dropped. Another said there should be no requirement for it by 2020. Others said there should be reduction in local output, even where enhanced news is provided, at least for larger local stations.	Given the strong evidence of the value of local news to citizens and consumers, we do not agree that there should be no news requirements. We consider that a reduction in local output in return for enhanced news provision is a reasonable part of the trade-off between providing citizens and consumers with the local content they value and the cost of its provision.

## Proposal 7

- A3.15 AM stations generally need no longer produce locally made programming or carry local material. But a minimum of 10 hours during weekday daytimes should be produced within the nation where the station is based (unless the station is already required to do less than this).



A3.16 Where stations wish to take up this proposal, we would anticipate a variation to their licence to capture the reduction in the number of locally produced hours.

<b>Respondent</b>	<b>Comments</b>	<b>Ofcom's response</b>
<b>RadioCentre</b>	Does not believe it is appropriate to retain "yet more burdensome input regulation on the sector in this way", and suggests that the demand for local content for the Nations will continue to be met, through the combination of other proposals and commercial incentives.	We respond to this in the statement.
<b>UTV</b>	States that London AM services perform an important role in the delivery of location-specific content to audiences, and that as a result they should be treated in the same way as services based within a home nation, retaining equivalent requirements for local programming.	We respond to this in the statement.
<b>Town and County Broadcasting</b>	Opposes the requirement of local AM services in the nations to retain 10 hours per day of content produced within the nation.	We respond to this in the statement.
<b>Merevale Media Services</b>	Suggested that Ofcom should secure "more access... for smaller stations."	This is outside the scope of the consultation.
<b>Advisory Committee for Wales</b>	States that AM's more cost-effective approach means that certain stations serve large geographical areas which are otherwise unserved, and feels that the local content of these stations should be protected.	As noted, AM services cover large geographical areas, meaning that their 'local' focus is much broader than similar FM services. We therefore believe that the requirement to produce 10 hours per day from the nation where the station is based will ensure that material relevant to local listeners is still produced.  In any event, what we proposed is to amend our

		general guidelines. Individual stations would still need to request a change to their licence conditions on localness and we would consider on case by case basis whether the general guideline should apply to them.
<b>Individual respondents</b>	One individual said AM stations should be closed down. Another said a particular network of stations should be forced to give up “overlapping frequencies” for use by other broadcasters as part of this proposal. A third said commercial broadcasters should be permitted to cease AM broadcasts and switch to digital as soon as they feel they are not commercially viable. A fourth said the proposal was an inefficient way of creating a national AM service using local transmitters and that AM licenses should be issued competitively on the basis of how much local programming an applicant is willing to provide.	Ofcom has no power (or desire) simply to close down AM stations, nor to force them to hand back frequencies (by contrast to, for example, revoking licences for serious licence breaches). Broadcasters are free to cease AM broadcasting – by surrendering their licences – and switching to DAB broadcasting (or using any other platform) whenever they wish. Any AM licenses that are advertised will be awarded on the basis of which applicant makes proposals that best meet the relevant statutory considerations.

### Other comments

- A3.17 A number of respondents offered views on radio-related issues other than the specific consultation proposals; these comments have been noted with thanks.
- A3.18 In particular, a number of respondents raised questions surrounding the adoption of DAB as the prime digital platform, and the possibility of a digital switchover for radio in the future. The Government’s Digital Britain Final Report of June 2009 proposed a Digital Upgrade for radio once certain criteria have been met. This policy envisages all services carried on the national and local DAB multiplexes ceasing broadcasting on analogue. At the same time, a new tier of ultra-local radio, consisting of small local commercial stations and community stations, could occupy the vacated FM spectrum. Radio services on MW will either upgrade to DAB or, if they are within the ultra-local tier, to FM. The Digital Economy Act facilitates the process of digital switchover with relevant legislative provisions. Full adoption of this policy is a matter for Government and for Parliament.

- A3.19 Several respondents outlined their views on community radio stations or the future of the small scale radio sector more generally. As outlined in Section 2, we plan in the short term to conduct further research on the small scale radio sector, including both commercial and community stations, and will include consideration of these comments in our work.
- A3.20 Our July 2009 consultation invited views as to whether there is a case for a limited redefinition of some music formats, and many respondents provided comments on this matter. While we did not receive evidence to support a change to current policy, we are continuing to consider the regulation of formats. To this end we repeat our call for evidence, and remain open to new data.

## Annex 4

# Statutory duties and new legislation

## Ofcom's role and duties with regard to radio

- A4.1 Ofcom's role in the regulation of radio is based on our statutory duties and responsibilities.
- A4.2 Ofcom has general duties set out in the Communications Act 2003 ("the 2003 Act").
- A4.3 Our principal general duty, when carrying out our radio functions, is set out in section 3 of the 2003 Act. It is to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition. It is unchanged by the Digital Economy Act 2010 ("the 2010 Act")
- A4.4 To meet this duty, Ofcom is required to secure (amongst other things):
- the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and
  - the maintenance of a sufficient plurality of providers of different television and radio services.

Again, these things are unchanged by the 2010 Act.

- A4.5 And, in performing that duty, Ofcom must have regard to:
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - any other principles appearing to Ofcom to represent the best regulatory practice.
- A4.6 In elaborating these, Ofcom has published its regulatory principles, the following of which are relevant here:<sup>46</sup>
- Ofcom will intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve;
  - Ofcom will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
  - Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
  - Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives; and

<sup>46</sup> See <http://www.ofcom.org.uk/about/sdrp/>

- Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.

A4.7 Ofcom must also take into account in relevant cases, amongst other things:

- the opinions of consumers in relevant markets and of members of the public generally; and
- the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.<sup>47</sup>

### **Ofcom's specific duties and functions: Analogue radio**

A4.8 Ofcom's specific duties and functions in relation to the regulation of localness in (analogue) radio broadcasting are as follows.<sup>48</sup> Once more, they are largely unchanged by the 2010 Act, although it does make some changes to the provisions relating to the renewal of analogue radio stations' licences and to section 314 of the 2003 Act described below.

A4.9 Under section 85 of the Broadcasting Act 1990 ('the 1990 Act'), one of Ofcom's functions is the licensing of national, local and community analogue radio stations.<sup>49</sup> This includes advertising, awarding and renewing those licences in accordance with Part III of that Act (as modified for the purposes of community radio), in particular sections 98 to 103B (for national licences) and 104 to 105A (for local services and as modified for community radio).

A4.10 Section 85 also requires Ofcom, in performing those functions, to secure the provision of a diversity of national analogue services (of which one must consist mainly of speech and another must consist wholly or mainly of non-pop music), and a range and diversity of local analogue services.

A4.11 Following amendments made to it by the 2010 Act, we are further required, under section 314 of the 2003 Act, to ensure that:

- programmes consisting of or including local material are included in local analogue radio services; and
- where such programmes are included in such a service, what appears to us to be a suitable proportion of them consists of locally made programmes.
- But, we need only do so, in the case of each such service, if and to the extent (if any) that we consider appropriate in that case.

---

<sup>47</sup> See section 3(4)(l) Communications Act 2003. This is the basis, for example, for requiring radio services based in the UK nations to broadcast material produced in those nations.

<sup>48</sup> Ofcom also regulates other aspects of national, local and community analogue radio services not directly relevant to localness regulation, though nonetheless of some relevance to this statement. These include rules restricting who may hold radio broadcasting licences and on the number of local commercial analogue licences a person may hold (under Schedule 14 of the 2003 Act and The Media Ownership (Local Radio and Appointed News Provider) Order 2003 (SI 2003/3299)), as well as restrictions on licences for digital broadcasting.

<sup>49</sup> It is a criminal offence to provide analogue radio broadcasting services without a licence (section 97 of the 1990 Act).

- A4.12 Following the 2010 Act's amendments, locally made programmes are those made wholly or partly at premises in a station's licensed area or, if Ofcom has specified an "approved area" applying to that station, made wholly or partly within that area. The 2010 Act amends section 314 to give Ofcom the power to approve an area as an "approved area." It must include a station's licensed area and Ofcom must consult on an area before approving it.
- A4.13 Section 314 also provides that Ofcom must draw up guidance as to how we consider the localness requirements described should be satisfied. That section says we must consult on that guidance when we make it and when we change it. And, we must have regard to that guidance in carrying out our functions in relation to local analogue radio services. Fulfilling the consultation requirements of this and the previous paragraph were two of the purposes of our July 2009 consultation and are two of the purposes of this statement.
- A4.14 Our guidance on "Localness on Local Commercial Radio Stations" can be found at Annex 1 to this statement and, from 8 June 2010, at <http://www.ofcom.org.uk/radio/ifi/rbl/car/localness/>. What it sets out are not binding minimum requirements for all stations. They are guidelines which set out Ofcom's general policy in relation to the localness requirements and how we are likely in most cases to apply them to local stations. Their application is considered in the case of each station and turned into the appropriate licence conditions.
- A4.15 Ofcom's functions also include setting the conditions in local radio licences, including those conditions that we consider appropriate taking into account our duties under, amongst others, the 1990 and 2003 Acts (section 87(1) of the 1990 Act). And, they include varying licence conditions either with the licensee's consent (where the variation relates to the licence duration) or after giving the licensee the chance to make representations (section 86(5) of the 1990 Act).
- A4.16 More particularly, Ofcom's functions include regulating the character of national and local analogue radio services. Under section 106 of the 1990 Act (and as modified for community radio), we must include in licences such conditions as appear to us 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. Section 106(1B) says the matters to which we must have regard in determining the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.
- A4.17 The localness guidance referred to above, and these statutory requirements, are reflected in character of service licence conditions, which set out the Format of the service each local radio licensee must broadcast. These include requirements about the local content of broadcast material, where stations are based and where programmes are made, as well as the "Character of Service" (e.g. any music requirements) a station must have.
- A4.18 Ofcom also has the function of regulating changes to licence conditions relating to characters of service. Following amendments made by the 2010 Act, under section 106(1A) of the 1990 Act, we can consent to changes to the character of licensed services if, but only if, we are satisfied that:
- the change would not substantially alter the character of the service;

- the change would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;
- in the case of a local licence, the change would be conducive to the maintenance or promotion of fair and effective competition in that area or locality;
- in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change; or
- in the case of a local licence:
  - (i) the departure would result from programmes included in the licensed service ceasing to be made in the area or locality for which the service is provided (i.e. the licensed area), but
  - (ii) those programmes would continue to be made wholly or partly within the approved area (as defined in section 314 of the 2003 Act).

We can only consent to a change on one of the grounds in the second to fourth bullet points after, and subject to, public consultation.

A4.19 Another of Ofcom's relevant functions is to set the coverage area for national, local and community analogue radio services:

- under section 106(2) of the 1990 Act Ofcom must include in national and local licences conditions requiring the licensee to secure that its service serves as much of the licensed area or locality as is reasonably practicable;
- under section 106(3) we must include in national licences conditions enabling Ofcom to require the licensee to provide the licensed service for additional areas beyond the minimum area we have previously determined; and
- under section 106(4) we can, if we think fit, vary a local licence to authorise the licensee to provide the licensed service for any additional area or locality adjoining the area or locality for which that service has previously been licensed to be provided. But, we can only do this if it appears to us that doing so would not result in a significant increase of the licensed area or locality for the service in question. Or, that the increase that would result is justifiable in the exceptional circumstances of the case.

### **Ofcom's specific duties and current functions: Digital radio**

A4.20 There are no provisions regulating specifically the extent to which material broadcast on digital radio is about, for and/or made in a particular locality. Nonetheless, Ofcom has duties and powers which impact on the regulation of localness on digital radio.

A4.21 So, for example, the general duties under the 2003 Act referred to above – like that relating to securing the availability of a wide range of radio services of high quality and calculated to appeal to a variety of tastes and interests – apply equally in Ofcom's exercise of our functions of licensing national and local radio multiplex services. And, when awarding a local multiplex licence, we must take into account



the extent to which the digital sound programme services proposed to be included on the multiplex would cater for the tastes and interests of people in the relevant locality (section 51(2) (d) of the Broadcasting Act 1996).<sup>50</sup>

### Public purposes for radio

A4.22 In previous consultations and regulatory statements, and the July 2009 consultation, Ofcom has set out how we will combine:

- our statutory duties and regulatory principles, as set out above;
- our analysis of the rationale for regulatory intervention in radio markets; and
- a set of potential public purposes for radio,

to produce a set of strategic aims for regulation in radio.<sup>51</sup>

A4.23 Our rationale for intervention has consumer and citizen aspects:

- for consumers, that radio is sufficiently important in people's lives to warrant intervention to address any market failures. We have suggested there may be market failures depriving some listeners of the types of services they want – including in particular local programming; and
- for citizens, even if the radio market were working effectively for consumers, it may not provide things that are good for society. For example, listening to news on the radio, both UK-wide and local, helps to make listeners better informed and therefore better able to participate in a democratic society, to the benefit of everyone.

A4.24 In general terms, the main public purposes has Ofcom identified for the radio sector as a whole are: Sustaining citizenship and civil society; Promoting education and learning; Stimulating creativity and cultural excellence; Representing the UK, its nations, regions and communities; Bringing the UK to the world and the world to the UK; and, promoting social gain. We considered that these provide a comprehensive set of public purposes for which regulatory intervention may be required (although some of these apply to the BBC rather than to commercial radio).

A4.25 The framework of strategic aims for the future regulation of radio we identified has three main elements. Two of these set out the objectives of regulatory intervention. One referred to the implementation of that framework.

A4.26 The two key objectives are:

<sup>50</sup> In awarding national multiplex licences, we also have to consider the capacity of the digital sound programme services proposed to be included in the service to appeal to a variety of tastes and interests (section 47 (2) (d) of the 1996 Act)

<sup>51</sup> For example, see *The Future of Radio: Localness on analogue commercial radio and stereo and mono broadcasting on DAB*, Ofcom, 7 February 2008, available at <http://www.ofcom.org.uk/consult/condocs/futureradio07/statement/statement.pdf>. See also *Radio Preparing for the Future Phase 2*, Ofcom, 19 October 2005, available at [http://www.ofcom.org.uk/consult/condocs/radio\\_reviewp2/p2.pdf](http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/p2.pdf); and *The Future of Radio: The future of FM and AM services and the alignment of analogue and digital regulation*, Ofcom, 17 April 2007, available at <http://www.ofcom.org.uk/consult/condocs/futureradio/future.pdf>



- to enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels; and
- to secure citizens' interests through the provision of radio designed to meet public purposes.

A4.27 As to the first objective, we have said we would seek to achieve it by:

- ensuring a wide range of services in the commercial sector and, in particular, the provision of local material, by regulating in the most effective way possible;
- encouraging the development of more choice and competition by licensing new analogue and digital services and encouraging the growth of digital radio; and
- encouraging the growth of a strong commercial sector, capable of extending range and choice and investing in the future.

A4.28 A key consideration is securing universality of certain radio services, especially ensuring local services nationwide, another is seeking to secure the provision of localness and as many smaller local services as possible given prevailing market conditions.

A4.29 In relation to localness, we have considered that these rationales, purposes and aims mean that some intervention is needed to ensure at least a minimum level of local programming provision.

A4.30 That is, we did not and do not believe the market would necessarily supply local programming. Or, at least not ubiquitously around the UK, as local programming is expensive, and it is always likely to be more profitable to network as much programming as possible, even if that means a drop in audiences. But, provision of that programming is linked to the first, fourth and sixth of the public purposes outlined above. And, intervention to secure its provision would pursue each of the key objectives outlined.

A4.31 The third element of the framework related to its implementation. In relation to that, we have aimed for a system with as a little intervention in the market as possible, consistent with meeting the key objectives.

A4.32 In developing in previous consultations (and that in July 2009) proposals for changes to existing content (including localness) regulation, we also took into account the need to balance (1) our desire to see a range of strong local radio services; against (2) the financial realities which meant existing levels of regulation may not have been sustainable. Our aim was and is to ensure that local services remain able to provide local programming at those times of day when they matter most to audiences.

### **Our present approach**

A4.33 Even with the changes made by the 2010 Act, outlined above, Ofcom's general and radio-specific statutory duties have not changed since we used the rationales for intervention and the public purposes for radio to inform the strategic framework described. Similarly, evidence from citizens and consumers continues to indicate the importance they attach to radio and to localness on radio.

- A4.34 Accordingly, we consider that the rationales, purposes and framework remain appropriate in the context of Digital Britain and the changes made by the recent Act. We therefore used the objectives outlined above in our July 2009 consultation document (and accompanying Impact Assessment), where relevant, as a set of criteria against which to assess our proposals for changes to regulation. We also again sought to take into account financial realities facing the radio industry and to consider whether these meant existing levels of regulation may not be sustainable.
- A4.35 And, we continue to take into account the rationales, purposes and framework, and the objectives, referred to, alongside our statutory duties and powers (as amended), and the relevant evidence, all as set out in this statement. Once more, we also take into account financial realities facing the radio industry and their impact on the appropriate level of regulation.