

## The regulation of Format changes

Radio is an evolving industry, and listeners' tastes and interests (particularly with regard to music) change over time. However, Ofcom has certain statutory duties with respect to station 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 change to the existing published Format of a service. One of five following 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' (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.

### 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. 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.

- **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, we are likely to grant such requests in accordance with the policy set out below.

### Regional FM stations requesting to share programming and become quasi-national stations

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 this allows 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.

## Regional FM stations

Station	Region(s)
Absolute Radio	London
Capital FM	London, North East England, Central Scotland, Yorkshire
GEM 106	East Midlands
Heart	London, West Midlands
Kerrang!	West Midlands
Kiss	London, East of England, Severn Estuary
LBC 97.3	London
Magic 105.4	London
Nation Radio	South Wales
Real Radio	Central Scotland, North East, North West, Yorkshire, South Wales, North & Mid Wales
Smooth Radio	London, East Midlands, West Midlands, North East, North West
The Coast	Solent
Wave 105	Solent
XFM	London

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, 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.

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).

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.

### Local stations requesting co-location and/or programme-sharing

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 locally made. Stations may request changes to their Formats, so as to co-locate and/or share programming with stations with which they share an approved area.

One of the relevant statutory criteria must be satisfied for Ofcom to consider any such format change. Subject to any consultation we are required to carry out, Ofcom will be likely to consent to such requests provided we are satisfied that the stations involved will continue to meet their licence obligations to provide local material relevant to the listeners in their individual licensed areas.

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 where it considers appropriate. 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.

### Local FM stations requesting an enhanced news option in return for a reduction in locally made programme hours

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 need only produce a minimum of 7 hours a day of locally-made programmes (rather than the usual 10 hours a day) 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 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.

### **Local AM stations requesting a removal of localness requirements**

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 a change to their Format. Where one of the relevant statutory 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.

**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.**