

Community Audio Distribution Systems Consultation

Consultation

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Section 1

Executive summary

- 1.1 Since 2004 Ofcom has been running a trial for Community Audio Distribution Systems (CADS) with restricted coverage using what was formerly¹ defined as non-broadcast spectrum. This trial is due to close at the end of March 2007, and this consultation considers whether, and if so how best, to implement a permanent scheme for this type of service.
- 1.2 CADS services, which have been trialled in Northern Ireland and parts of West Yorkshire, use Citizens' Band (CB) Radio equipment. To date they have been used only to transmit religious services to house-bound parishioners, but they could be employed to relay any community event. The providers of CADS services are currently licensed under the Wireless Telegraphy Act (WTA). CADS licensees are allowed 'reasonable endeavours' usage of CB Radio spectrum which gives them unprotected coverage of two to three km but only when no-one else is using the channel in question. The content they carry is restricted to the live transmission of community events (see below), and does not include carriage of material which has been specifically developed for the purpose of broadcasting. By virtue of their use of specialist CB Radio equipment, each CADS service is available to a small and self-selecting user group.
- 1.3 In relation to CADS, we make the following proposals and invite commentary on the following issues:
- To introduce a permanent scheme for CADS services
 - To ask the Secretary of State for Culture, Media, and Sport to lay a Statutory Instrument before Parliament exempting CADS from the need to hold a Broadcasting Act (BA) licence.
 - To recommend that the Statutory Instrument should ensure that CADS:
 - are available only for the purpose of the live onward transmission of a community event (for example, an act of worship, a council meeting, a community play or a call to prayer);
 - may not carry commercial messages of any kind;
 - are for intermittent use² and only available for public consumption to a geographically local area, on a 'reasonable endeavours'³ basis, by means of Citizen's Band Radio equipment.
- 1.4 Should Parliament approve the Statutory Instrument we propose:

¹ The Communications Act 2003 removed the distinction between broadcast and non-broadcast spectrum.

² By 'intermittent use' we mean transmission on any available frequency for a maximum of four hours (which may be non-consecutive) within a twenty-four hour period.

³ See paragraph 3.20 for a definition of 'reasonable endeavours' spectrum provision.

- To allow CADS services access to all CB Radio channels. Currently, this would include the 40 channels located between 26.97 and 27.41 MHz, (the EU CB Band) as well as the 40 channels located between and 27.60 and 27.99 MHz (the UK Citizen Band) which have been used by CADS during the trial. However, CADS operators should note that Ofcom reserves the right to amend the use of the CB Radio spectrum should circumstances warrant, although on the basis of current information, it does not believe that a review of this spectrum is likely to be necessary in the short-term (i.e. the next three to five years).
 - That all technical requirements applicable to the use of Citizens' Band equipment will apply to Community Audio Distribution Systems;
 - To maintain power levels at current levels (typically up to 4.0 watts)
 - To remind CADS operators that, in common with standard CB Radio users, their access to the CB Radio spectrum is dependent upon the agreement of the Ministry of Defence, which may be withdrawn at any time [without prior notice]; and
 - To remind CADS operators that CB Radio equipment must be operated on a 'non-interference, non-protected' basis; that is, it shall not cause harmful interference to, and shall not claim protection from, other stations operating in accordance with Article 5 of the Radio Regulations
- 1.5 In light of CADS services' use of CB Radio spectrum, they would continue to be subject to any changes pertaining to the use of that spectrum. This would include the proposal to make all CB Radio use exempt from the need to hold a WTA licence.

Section 2

Background

- 2.1 This consultation seeks to consider whether to develop a long-term scheme for Community Audio Distribution Systems once the current trial ends and if so what the most appropriate licensing or registration process would be.
- 2.2 A separate but linked consultation document, being published simultaneously with this one, sets out proposals regarding the future licensing of restricted radio services. This includes a proposal to license Audio Distribution Systems on a permanent basis, and seeks evidence of demand for the currently unused spectrum at 55 to 68 MHz. This document, which has a ten-week rather than five-week consultation period, can be found at: http://www.ofcom.org.uk/consult/condocs/rrs_5568/
- 2.3 Given that we have already conducted a consultation on Community Audio Distribution Systems⁴ and that the proposals within this current consultation do not include any significant alteration to the characteristics of these services, we believe that a five-week consultation period is appropriate. Furthermore, we recognise that our preferred policy option would require secondary legislation and wish to ensure there is sufficient time for this process to be completed, prior to the end of the Community Audio Distribution Systems trial.
- 2.4 Since November 2004 Ofcom has run a trial for Community Audio Distribution Systems (CADS) using what was formerly⁵ defined as non-broadcast spectrum. This trial was designed to meet the demand identified among some religious organisations to enable people who cannot attend a place of worship to hear a religious service. However, the definition used in the trial allows for the onward transmission of non-religious community events as well. CADS share Citizen's Band (CB) Radio spectrum with standard CB Radio users and use specialist CB Radio equipment to transmit and receive their services. The CADS trial operates in Northern Ireland and West Yorkshire and, having been extended, will now end on 31 March 2007. We are now considering whether we should offer a more permanent means through which to meet the demand for this type of service.
- 2.5 The impact assessment in Annex 5 considers the regulatory options pertaining to Community Audio Distribution Systems.

⁴ <http://www.ofcom.org.uk/consult/condocs/cads/cads/cad.pdf>

⁵ Op cit, Communications Act 2003

Section 3

Community Audio Distribution Systems (CADS)

History and purpose of the CADS trial

3.1 Since 4 November 2004 Ofcom has been running an experimental licensing scheme, or trial, for Community Audio Distribution Systems (CADS). The CADS trial originally ran until 3 November 2005, but has subsequently been extended and will now end on 31 March 2007.

CADS, as defined for the purposes of the trial:

- are used to retransmit material already prepared for public use, such as religious services or other public events.
- may not transmit content that has been deliberately developed for the purpose of the CADS transmission. (This prevents CADS from carrying such content or commercial messages.);
- are transmitted within the bands allocated for the use of Citizen's Band (CB) Radio and may only be received on non-standard receivers, specifically CB Radio equipment;
- are operated on an opportunistic basis and have not been given exclusive access to any particular frequency. (The spectrum allocated to CADS and standard CB Radio users is shared on a secondary basis with the Ministry of Defence (MoD) and the frequencies are available through a first come first served arrangement rather than being pre-assigned and protected.);
- are licensed at relatively low power levels (typically they use a transmitter power level of up to 4.0 watts) in order to restrict their coverage to a small area, generally around two to three kilometres radius (although this could be greater if the terrain allows);
- are licensed for the length of the trial;
- have been licensed under the WTA alone, and not under the Broadcasting Act (BA). The licensing process has been carried out by Ofcom's relevant regional offices.

3.2 This experimental licensing scheme was established, following consultation in August 2004⁶, in order to meet the demand identified by some religious organisations to enable people who cannot attend a place of worship (perhaps because of age or ill health) to hear religious services. Ofcom recognised that the limited amount of spectrum available within the sound broadcasting bands (VHF Band II (FM) or

⁶ Details of the CADS trial consultation can be found at <http://www.ofcom.org.uk/consult/condocs/cads/cads/cad.pdf>

medium wave (AM)), which were and still are under pressure from the demand for “traditional” radio broadcasting services, restricted the scope for using these frequencies for other purposes. However, it was felt that it was important to provide a means thorough which to cater for this unmet need. However, Ofcom did not wish to limit this opportunity to religious groups and therefore specified that CADS would be available to “a local community of users” rather than a specific type of group. It was also noted that CADS could perhaps improve the usage of the CB Radio Spectrum⁷.

- 3.3 The purpose of the trial was to gain a better understanding of a number of issues before deciding whether to proceed with more permanent arrangements, including:
- whether CADS licences would be a useful addition to the range of radio services currently available;
 - the extent to which the spectrum we decided to use for these licences was appropriate and, as it was shared with standard CB Radio use, whether the two types of use could co-exist within the same spectrum allocations; and
 - whether the decision to place limits on the content carried over the spectrum (given that CADS licences do not include provisions for listener protection) raised any problems.
- 3.4 The remainder of this consultation outlines what we have learned from the trial on these issues, explains why we conclude that CADS should be introduced on a permanent basis, and asks some questions about the structure of the arrangements.

Findings from the trial and proposals for CADS licensing

Demand for and use of CADS during the trial

- 3.5 The CADS trial was launched in two areas, Northern Ireland and West Yorkshire, and to date the licences have only been requested by religious groups. The take up in West Yorkshire was low. Eight licences have been issued; two to Jehovah’s Witness groups, and six to Muslim religious groups. However, CADS have proven far more popular in Northern Ireland where 100 licences have been issued⁸. The vast majority (81) are held by Roman Catholic churches, although a number of other religious denominations have either been granted a CADS licence or shown an interest in applying for one.
- 3.6 While we acknowledge that demand for CADS in West Yorkshire has remained low, it has been consistent in Northern Ireland, and it is possible that the number and variety of CADS might increase if this type of service was made available across the UK and suitably promoted via our regional offices. Moreover, even if demand does not increase greatly, the trial has shown that CADS meet a particular need that cannot be met through any other existing licence. Given this finding, we feel that introducing a longer-term CADS scheme is justified.

⁷ In April 1995 there were almost 56,000 registered CB Radio licences. By March 2004 the figure had declined to 20,000 and it now stands at just under 16,000.

⁸ Figure at end March 2006

- 3.7 Moreover, in light of the low and declining levels of CB radio use, the introduction of a more permanent arrangement for CADS would reflect our general duty under the Communications Act to secure “the optimal use for wireless telegraphy of the electro-magnetic spectrum”⁹.

Content Issues and the need for a Broadcasting Act (BA) licence

- 3.8 During the trial, CADS licensees have operated on a provisional basis, under the WTA. The services they provide have been strictly limited to the live transmission of religious services and other public events. Ofcom has not required those providing CADS services to hold a licence under the Broadcasting Act 1990. There were a number of reasons for adopting this provisional approach, most notably that:
- the services do not operate in traditional broadcasting spectrum and could not be received using conventional radio or television broadcast receivers. (They can only be transmitted or received using CB Radio equipment); and
 - it is not permitted for the services to transmit content specially developed to be used for the purpose of the CADS transmission. This includes commentary and commercial messages.
- 3.9 Having now had the opportunity to conduct a detailed review of CADS, Ofcom has concluded that under the Broadcasting legislation, CADS services do fall within the category of sound broadcasting services as defined in section 126(1) of the Broadcasting Act 1990 (as amended), on the basis that they involve the provision of a service consisting of the one-way transmission of sound intended for reception by members of the public. Since this category of service is licenseable under the legislation, CADS services must be licensed under the Broadcasting Act 1990 unless it is considered appropriate that they should be made licence-exempt.
- 3.10 However, as noted above, CADS are tightly restricted in terms of the coverage they can achieve because of the frequencies they employ, the basis upon which these frequencies may be used, and the specialist equipment needed to use them (see section on the technical aspects of the licensing system below for further details). Moreover, by virtue of the low usage of CB Radio and the small coverage area achievable (between two to three km radius, depending on terrain) the likelihood of accidentally hearing a CADS service is low. These factors mean that the way CADS services operate is very similar to closed user group services, which are not licensable under the Broadcasting Act.
- 3.11 In addition, CADS are subject to tight content controls. Specifically, they are only able to broadcast entirely unedited or unamended community events, and may not carry any additional content specially developed to be used for the purpose of the CADS transmission or commercial messages (advertising/sponsorship etc). During the course of the trial, we have not received evidence that CADS users feel overly constrained by the content restrictions applied to these licences. Indeed, the feedback we have had indicates that the terms relating to the content available via CADS services fit the purpose for which they were designed, namely the transmission of community events.

⁹ Section 3 (2) (a), of the Communications Act 2003

- 3.12 Given these factors, Ofcom considers that it is sensible for CADS to be subject to as light touch a regime as possible.
- 3.13 Section 97(2) of the Broadcasting Act 1990 allows for a government minister to lay before Parliament a Statutory Instrument making specific services or types of service exempt from the need to hold a Broadcasting Act licence.
- 3.14 We believe that licensing CADS under the broadcasting legislation would place a disproportionate burden upon CADS service operators. Notable among these burdens are the additional costs of Broadcasting Act licensing (costs which would have to be borne by services that are designed to transmit unedited community events and which have been of little or no commercial interest), the requirement to record and keep output for 42 days after broadcast and the need to adhere to Ofcom's Broadcasting Code.
- 3.15 Therefore, we propose to ask the Secretary of State for Culture, Media, and Sport to lay a Statutory Instrument before Parliament exempting CADS from the need to hold a Broadcasting Act (BA) licence.
- 3.16 BA licence-exempt CADS services should be clearly distinct from any other type of broadcast service in terms of both content and access to spectrum. They should maintain the self-selecting nature of their audience. As noted above, this is a result of their use of specialist CB Radio equipment to transmit and receive CADS services. It is also important that no single CADS service should be able to dominate the use of a particular CB Radio channel(s), and thereby adversely affect other CADS services or standard CB Radio users in a particular area.
- 3.17 CADS extend the range of communications methods available to members of the public wishing to offer a very specific service within a local community. While so far they only have been licensed to religious groups, Ofcom believes that it would be inappropriate to make them available to only one type of community group.
- 3.18 To ensure that these characteristics are guaranteed, we recommend that a Statutory Instrument seeking to exempt CADS from the need to hold a BA licence should define them in the following manner:

CADS:

- would be available for the purpose of the live onward transmission of a community event only (for example, an act of worship, a council meeting, a community play or a call to prayer);
 - by 'live onward transmission' we mean the simultaneous transmission of the community event with no additional editorial content or production.
 - by 'community event' we mean any collective event to which members of the public are invited or have open access should they desire it, and which would take place regardless of whether it was being transmitted by means of wireless telegraphy.
- may not carry commercial messages of any kind;
- by 'commercial messages' we mean all advertising or sponsorship

- are for intermittent use and only available for public consumption to a geographically local area, on a 'reasonable endeavours'¹⁰ basis, by means of Citizen's Band Radio equipment.
 - by 'intermittent use' we mean transmission on any available frequency for a maximum of four hours (which may be non-consecutive) within a twenty-four hour period.

3.19 Discussion with the DCMS indicates that it will consider a statutory instrument to exclude CADS from the requirement to hold a BA licence, pending the outcome of this consultation.

Question 1) Do you agree that we should introduce a permanent scheme for CADS?

Question 2) Do you agree that we should ask the Secretary of State for Culture, Media, and Sport to lay a Statutory Instrument before Parliament exempting CADS from the need to hold a Broadcasting Act (BA) licence?

Question 3) Do you agree with our recommended definition for CADS services? If not please indicate which aspects of the definition you feel should be omitted, amended or added to?

Technical aspects of the licensing system

3.20 Alongside standard Citizens' Band (CB) Radio users, CADS services share the spectrum assigned to CB Radio on a secondary basis with the Ministry of Defence (MoD), and frequencies are used on a first come first served basis rather than being pre-assigned and protected. The use of this spectrum is based on the understanding that as a secondary user CADS should not cause interference to military radio services, and that if the MoD requires the use of any CB Radio channel at any location it may do so at any time without prior notice. This unassigned and unprotected spectrum usage has been defined as "reasonable endeavours" access to spectrum.

3.21 In the original consultation on the "Provision of Community Audio Distribution Systems", which was published on 10 August 2004 and can be found at: <http://www.ofcom.org.uk/consult/condocs/cads/cads/cad.pdf>, we made the following proposals with regard to the management of the spectrum available to CADS:

- Community Audio Distribution Systems will make use of the UK Citizens' Band allocation as defined in RA246¹¹. The UK Citizens' Band allocation comprises 40 channels which will therefore be shared between traditional Citizens' Band users and Community Audio Distribution Systems;
- in order to ensure the successful co-existence of Community Audio Distribution Systems with other radio spectrum users, all technical requirements currently

¹⁰ See paragraph 3.20 for a definition of 'reasonable endeavours' access to the spectrum.

¹¹ A copy of this document is available on Ofcom's website at:

http://www.ofcom.org.uk/static/archive/ra/publication/ra_info/ra246/ra246.htm

applicable to the use of Citizens' Band equipment will apply to Community Audio Distribution Systems; and

- in order to provide the capacity to cater for a reasonable number of Community Audio Distribution Systems transmitting simultaneously from within each community, Ofcom proposes to restrict transmitter antenna height so that the maximum communications range of Community Audio Distribution Systems will be somewhat less than for traditional Citizens' Band use. Transmitter antenna height will probably be restricted to 10 metres above street level, although Ofcom regional staff may determine the height restriction on a case-by-case basis during the trial;

3.22 Our monitoring work, coupled with direct feedback from CADS licensees, indicates that the technical specifications applied to CADS during the trial have succeeded in enabling us to provide the capacity to cater for a reasonable number of simultaneous transmissions from within the same community, and to ensure the successful coexistence of Community Audio Distribution Systems with military mobile services. We have received no evidence of interference from licensed CADS services to the military or to standard CB Radio users, and the main technical issue has centered on the poor sensitivity of receivers. We have concluded that this issue should not prevent us from introducing a permanent scheme for CADS because:

- the trial has shown that the three uses of the CB Radio spectrum can co-exist, with the proviso that the secondary users have only 'reasonable endeavours' access;
- CADS licensees are not causing interference to military use of the spectrum; and
- the potential for interference to CADS services, when a specific channel is free for use, arises largely from the build of the CB Radio equipment and could be much reduced or eliminated by the purchase of better quality equipment.

3.23 Therefore, we propose:

- to allow CADS services access to all CB Radio channels. Currently, this would include the 40 channels located between 26.97 and 27.41 MHz (the EU CB Band), as well as the 40 channels located between and 27.60 and 27.99 MHz (the UK Citizen Band), which have been used by CADS during the trial. However, CADS operators should note that Ofcom reserves the right to amend the use of the CB Radio spectrum should circumstances warrant, although it does not believe that a review of this spectrum is likely to be necessary in the short-term (i.e. the next three to five years).
- that all technical requirements applicable to the use of Citizens' Band equipment will apply to Community Audio Distribution Systems;
- to maintain power levels at current levels (typically up to 4.0 watts);
- to remind CADS operators that, in common with standard CB Radio users, their access to the CB Radio spectrum is dependent upon the agreement of the MoD and may be withdrawn at any time without prior notice; and
- to remind CADS operators that CB Radio equipment must be operated on a 'non-interference, non-protected' basis; that is, it shall not cause harmful interference to, and shall not claim protection from, other stations operating in accordance with Article 5 of the Radio Regulations.

As noted above, we have recommended that if the Secretary of State for Culture, Media, and Sport agrees to lay a Statutory Instrument before Parliament exempting CADS from the need to hold a Broadcasting Act (BA) licence, the Instrument should restrict the services to coverage of a geographically local area.

Question 4) Do you agree with the proposals regarding the technical characteristics of the licence? If not, what alternative proposals do you have in mind?

Licensing: costs and administration

- 3.24 Ofcom shortly will be publishing a consultation which will, within a wider consideration of current exemption regulations, include a proposal that all Citizens' Band (CB) Radio use, including that by CADS services, should be made WTA licence-exempt, subject to the general criteria that would be made by Wireless Telegraphy Exemption Regulation. If agreed, this proposal means that the current fee of £15 per annum would no longer apply as CB Radio users, including CADS operators, would no longer need to be issued with a WTA licence. The specific proposal regarding the fees charged for WTA licences for CB Radio is included in the "Wireless Telegraphy Act Licence Fee Proposals for encouraging internet licensing including changes for ship, amateur and citizens' band radio licences Consultation" which was published 12 April 2006. This can be found at <http://www.ofcom.org.uk/consult/condocs/internetlicence/internetlicence.pdf>. The "Exemption Regulations" consultation is scheduled to be published on our website in May.
- 3.25 If the response to this consultation indicates that we should ask for a Statutory Instrument to make CADS Broadcasting Act licence-exempt, and the subsequent parliamentary procedure is successful, we would hope to introduce a one-off 'registration for life' process for CADS operators. This would be administered through Ofcom's regional offices (in the same way that the CADS trial licences have been administered by our offices in Belfast and West Yorkshire).
- 3.26 It should be noted that, if our proposal to make CADS Broadcasting Act licence-exempt does not receive a favourable response, or a subsequent Statutory Instrument is not approved by Parliament, we would consider licensing CADS under the Broadcasting Act.
- 3.27 In light of the fact that CADS-type services would in those circumstances fall into the category of "being broadcast for reception within a particular establishment in the United Kingdom or at another defined location... or for the purpose of a particular event within the United Kingdom" (CA 2003, section 245 (4)(c)), they would need to be licensed as restricted services under the Broadcasting Act. We would seek to maintain as light touch a licensing and regulatory system as possible. However, 'CADS-RSLs' would, like all other RSLs, be expected to adhere to the Broadcasting Code and to log their content for 42 days. Should you wish to view Ofcom's Broadcasting Code, it can be found at: <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.
- 3.28 A Broadcasting Act licence for CADS would be charged on a cost recovery basis. Due to the nature of 'reasonable endeavours' access to the spectrum, CADS would not require any particular input from Ofcom's frequency planners and therefore the resulting licence fee would only reflect the costs involved in the administration involved in licensing these services (which is likely to be relatively low), and the potential need to deal with content complaints.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 31 May 2006**
- A1.2 Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
- A1.3 Please can you send your response to eva.koekelbergh@ofcom.org.uk.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Floor 5
Eva Koekelbergh
Radio Executive
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4589
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Eva Koekelbergh on 020 7783 4392.

Confidentiality

- A1.8 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).
- A1.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place

any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

- A1.10 Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.
- A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

- A1.12 Following the end of the consultation period, Ofcom intends to publish a statement during July.
- A1.13 Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

- A1.14 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.
- A1.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
- A1.16 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, Director, Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom (Scotland)
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
Tel: 0141 229 7401
Fax: 0141 229 7433
E-mail: vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Sub Heading

- A4.1 Our key proposals for this consultation are outlined in the executive summary and described in more detail throughout the document. We would welcome views by **31 May 2006** on the following question:

Question 1) Do you agree that we should introduce a permanent scheme for CADS?

Question 2) Do you agree that we should ask the Secretary of State for Culture, Media, and Sport to lay a Statutory Instrument before Parliament exempting CADS from the need to hold a Broadcasting Act (BA) licence?

Question 3) Do you agree with our recommended definition for CADS services? If not please indicate which aspects of the definition you feel should be omitted, amended or added to?

Question 4) Do you agree with the proposals regarding the technical characteristics of the licence? If not, what alternative proposals do you have in mind?

- A4.2 Note: The separate but linked document *Radio Restricted Services and 55 to 68 MHz: A Consultation* also poses several questions for consultation regarding the licensing of restricted broadcast services in what was formerly¹² defined as non-broadcast spectrum, as well as considering the liberalisation of regulations pertaining to radio restricted service licences. The closing date for this consultation is 5 July 2006.

¹² The Communications Act 2003 removed the distinction between broadcast and non-broadcast spectrum.

Annex 5

Impact assessment

Introduction

- A5.1 The analysis presented in this Annex, when read in conjunction with the rest of this consultation document, represents an Impact Assessment (IA), as defined by Section 7 of the Communications Act 2003 (“the Act”). You should send any comments on this IA to Ofcom by the closing date for this consultation. We will consider all comments before deciding whether to implement the proposals set out in the consultation document.
- A5.2 IAs form part of best practice policy-making and are commonly used by other regulators. This is reflected in Section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. In accordance with Section 7 of the Act, in producing the IA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.
- A5.3 This impact assessment considers the proposals laid out in the Community Audio Distribution Systems consultation.
- A5.4 Our policy proposals are based on both statutory duties and regulatory principles. With respect to CADS we have paid particular attention to Ofcom’s general duties to ensure:
- “the optimal use for wireless telegraphy of the electro-magnetic spectrum”
 - “the availability throughout the United Kingdom 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”¹³
- A5.5 We have also considered the three elements of the strategic framework for the future regulation of radio as set out in “Radio – Preparing for the Future, Phase 2: Implementing the Framework” which can be found on our website at: http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/p2.pdf.
- A5.6 These are:
- To enhance choice, diversity and innovation for consumers at the UK, national, regional, local and community levels.
 - To secure citizens’ interests through the provision of radio designed to meet public purposes.
 - To do this with as little intervention in the market as possible, consistent with meeting our objectives.

¹³ Section 3 (2) (a) + (c) of the Communications Act 2003

- A5.7 We have also considered the proposals set out in this consultation with a view to looking to the future of radio licensing with the particular aim of reducing regulation where possible.
- A5.8 Community Audio Distributions Systems (CADS) are short-range services for relaying community events live via Citizens' Band (CB) Radio spectrum. Alongside standard CB Radio users, CADS share the spectrum assigned to CB Radio on a secondary basis with the Ministry of Defence (MoD). They are allowed 'reasonable endeavours' usage of this CB Radio spectrum. This means that CADS licensees' use of CB Radio spectrum is restricted to a first come first served arrangement, that the services are unprotected from incoming interference, and that they may not cause interference to the primary spectrum user. CADS services are restricted in terms of content to transmit only live community events without transmitting any additional content specifically developed for the purpose of broadcasting including commercial messages, and by virtue of their use of specialist CB Radio equipment each CADS service is only available to a small and self-selecting user group.
- A5.9 CADS are currently available on a trial basis in Northern Ireland and parts of West Yorkshire. For the purposes of the trial, they have been licensed under the Wireless Telegraphy Act (WTA) alone, and not under the Broadcasting Act (BA). The CADS trial has been extended and is now due to close on 31 March 2007. However, in advance of the close of that trial, we are considering what form of licensing or registration scheme might be appropriate if CADS were to be moved on to a more permanent footing in order to meet the demand for this type of service.
- A5.10 Given the trial nature of the services being consulted on, and also the nature of the options being considered, this IA focuses on the qualitative aspects of the various options and their potential impact rather than seeking to quantify the impact of those proposals on relevant stakeholders. Ofcom considers that such an approach is in line with Ofcom's regulatory principles, notably the obligation to operate with a bias against intervention but to ensure that any interventions that are required are evidenced-based and proportionate.

Option 1: *Stop authorising the provision of CADS altogether*

- A5.11 There is the option at the end of the trial not to authorise the provision of CADS services at all. This would prevent the services that fall within the definition of CADS from being provided in the future. This does not appear to be an attractive option for a number of reasons.
- A5.12 The ongoing trial of CADS has clearly shown that there is a demand for this type of service, notably among church congregations in Northern Ireland. While take up has not been similarly robust in the second trial area, CADS offer a benefit to local communities (for example, enabling the infirm to listen to church services or to give members of a particular community access to a local council meeting or to hear the performance of a community play) which would not otherwise be available. The scope for existing radio broadcasting services to meet this demand is restricted due a lack of spectrum availability in the 'traditional' radio broadcast bands. The trial has shown that CADS and CB Radio use can co-exist within the same spectrum bands without causing interference to the primary spectrum user, namely military mobile radio services. Finally, in light of the decrease in CB Radio use over recent years, allowing CADS to share this spectrum on a longer-term basis is likely to better

enable us to meet our general duty under the Communications Act to secure “the optimal use for wireless telegraphy of the electro-magnetic spectrum”¹⁴.

- A5.13 It is evident that if we were to stop licensing CADS at the end of the trial, there would be an unmet need in Northern Ireland. Moreover, other communities in the UK which might wish to avail themselves of the opportunity to relay community events in the future would be prevented from doing so. Feedback throughout the trial indicates that CADS have not caused interference to military mobile radio and can co-exist with standard CB radio use.
- A5.14 In light of these findings, and the fact that introducing CADS might result in a more efficient use of the CB Radio spectrum, we conclude that it is sensible to intervene in order to establish a permanent regime for CADS.
- A5.15 Proceeding with this proposal would also be consistent with Ofcom’s general statutory duties to further the interests of citizens and consumers in relation to communications matters, in particular by securing the optimal use for wireless telegraphy of the electro-magnetic spectrum; making available throughout the UK a wide range of electronic communications services; having regard to the different needs and interests of all persons who may wish to make use of the spectrum including the needs of the disabled and of the elderly (in this case, particularly those most likely not to be able to attend church services) and the different interests of persons in different parts of the UK [including different ethnic communities and those living in rural and urban areas].
- A5.16 Against that background, there is then the consideration of what the best mechanism might be for giving effect to these services.

Option 2(a) License CADS under the Broadcasting Act as well as the Wireless Telegraphy Act

- A5.17 Having now had the opportunity to conduct a detailed review of CADS, Ofcom has concluded that under the Broadcasting legislation, CADS services do fall within the category of sound broadcasting services as defined in section 126(1) of the Broadcasting Act 1990 (as amended), on the basis that they involve the provision of a service consisting of the one-way transmission of sound intended for reception by members of the public. Since this category of service is licenseable under the legislation, CADS services must be licensed under the Broadcasting Act 1990 unless it is considered appropriate that they should be made licence-exempt.
- A5.18 However, we believe that this would introduce a comparatively heavy financial and regulatory burden for a service that is very firmly restricted in terms of access to frequencies, coverage (by virtue of the use of CB Radio spectrum) and the type of content which it could transmit and which is very unlikely to attract accidental listening. Notable among these burdens are the additional costs of Broadcasting Act licensing (costs which would have to be borne by services that are designed to transmit unedited community events and which have been of little or no commercial interest), the requirement for all Broadcasting Act licensees to record and keep their content for 42 days after broadcast, and the need to adhere to the Broadcasting Code.

¹⁴ Section 3 (2) (a), of the Communications Act 2003

- A5.19 To date CADS operators have been charged a nominal fee of £15 per annum for their WTA licence. There is no directly equivalent Broadcasting Act (BA) licence. However, the closest for the purpose of comparison probably would be a long-term restricted service licence which, in addition to an application fee of £200, is currently charged at a rate of between £240 and £375 per annum. These figures include the costs of the WTA licence.
- A5.20 Were CADS to be licensed under the BA they would be required to record and keep their output for 42 days after broadcast. This is to enable Ofcom to listen to content if we receive a complaint. In terms of complying with this requirement, the cheapest method for a licensee would probably be to record output on a long-play video recorder. To do this, CADS licensees would need to purchase a video recorder, video cassettes and a cable to link the recorder to the CB equipment. They would also need an electrician to adapt the CB radio because most CB equipment does not have an auxiliary out socket. Ofcom has estimated that the total cost would be likely to be in the order of £150 per licensee.
- A5.21 Thus the cost of the application fee and the equipment set-up costs together might be in the order of £350 and the on-going annual licence fee might be in the order of £240-375 per annum. Although these costs might not appear to represent a large financial outlay Ofcom is aware that CADS are designed for non-commercial community use and that such costs could represent a significant cost to the type of groups which operate these services. In this context it is important to remember that unlike other community focused radio broadcast services CADS may not carry content specially developed to be used for the purpose of the CADS transmission and are highly restricted in terms of the nature of their access to spectrum and potential audience.
- A5.22 In addition, under a BA licence CADS would be compelled to take an active part in the process of handling any complaint regarding content on their services which would obviously involve someone having to take an administrative/compliance role.
- A5.23 CADS operators would need to provide a recording in response to a complaint about content received by Ofcom, and thereafter, if necessary, a written response to the complaint. It is not unknown for individuals or groups who disapprove of certain belief systems to target services providing religious content with unsubstantiated complaints which, nonetheless, require a response. Adhering to the Broadcasting Code and seeking to avoid potential complaints might well force some CADS providers to alter the community event to be transmitted. This would operate against the primary purpose of CADS services, which is to enable the free expression and onward transmission of an existing event rather than provide edited or amended content created specifically for broadcast. These content regulations might well constitute even more of a drain upon the type of groups wishing to operate CADS services than the financial considerations outlined above.
- A5.24 Taken together we believe that these unavoidable aspects of Broadcasting Act licensing could represent a disproportionate burden, given the nature of CADS services and the fact that they have a self-selecting audience. We also note that they could potentially counter the purpose for which CADS are designed, namely the relay of unedited community events.
- A5.25 Section 97(2) of the Broadcasting Act 1990 allows for a government minister to lay before Parliament a Statutory Instrument making specific services or types of service exempt from the need to hold a BA licence.

A5.26 This presents us with an alternative option:

Option 2(b) Ask the Secretary of State for Culture, Media, and Sport to lay a Statutory Instrument before Parliament exempting CADS from the need to hold a Broadcasting Act (BA) licence and recommend that the SO should ensure that CADS:

- **are available for the purpose of the live onward transmission of a community event only (for example, an act of worship, a council meeting, a community play or a call to prayer);**
- **may not carry commercial messages of any kind;**
- **are for intermittent use¹⁵ and only available for public consumption to a geographically local area, on a 'reasonable endeavours'¹⁶ basis, by means of Citizen's Band Radio equipment.**

A5.27 A Statutory Instrument exempting a service defined in the aforementioned terms from the need to hold a Broadcasting Act licence would provide a one-off process that if successful would enable us to offer an appropriately light touch scheme for a very clearly defined type of limited service that meets a particular need.

A5.28 It would enable CADS to avoid the disproportionate burden described above in Option 2a, while providing a carve-out for a very specific type of community service. While CADS services technically fall within the definition of sound broadcasting services, as set out in the legislation, in terms of content, CADS services do not contain the type of material normally carried by such sound broadcasting services i.e. content specially developed to be used for broadcast purposes or commercial messages, and by virtue of their use of specialist CB Radio equipment and the nature of their access to the spectrum they have small self-selecting audiences. In addition, the combination of restrictions regarding coverage and intermittent use, coupled with the generally low usage of the CB Radio spectrum, means that it is unlikely that CADS services would be heard by accident.

A5.29 Given the proposals to maintain the very limited nature of CADS services in terms of the content they could deliver, their use of spectrum and their potential audience we believe that it is appropriate to introduce as light touch a scheme for enabling the provision of CADS as possible. If successful, Option 2(b), the laying of Statutory Instrument before Parliament in order to make CADS exempt from the need to hold a Broadcasting Act, would enable Ofcom to fulfil this goal. In this context it should be noted that discussion with the DCMS indicates that it will consider a statutory instrument to exclude CADS from the requirement to hold a BA licence, pending the outcome of this consultation.

A5.30 On the basis of the foregoing discussion and in view of the declining use of CB Radio spectrum, it would seem that option 2(b) would meet Ofcom's relevant duties and objectives in a proportionate manner. Specifically, it is likely that it would optimise the use of spectrum and serve the needs of local communities with relatively little impact on other spectrum users. However, should you disagree with

¹⁵ By 'intermittent use' we mean transmission on any available frequency for a maximum of four hours (which may be non-consecutive) within a twenty-four hour period.

¹⁶ See paragraph 3.20 for a definition of 'reasonable endeavours' spectrum provision.

this conclusion, we welcome your comments in relation to the factors considered above.

Annex 6

Race impact assessment

- A6.1 In accordance with Race Relations legislation, Ofcom has carried out a race impact assessment on the policy options, having regard to guidelines issued by the Commission for Racial Equality (CRE), which pose the following questions in relation to new policy proposals:
- Will the proposed policy involve, or have consequences, for citizen-consumers?
 - Could these consequences differ according to people's racial group? (e.g. because they have particular needs, experiences or priorities)
 - Is there any evidence that any part of the proposed policy could discriminate unlawfully, directly or indirectly, against people from some racial groups?
 - Is there any evidence that people from some racial groups may have different expectations of the policy in question?
- A6.2 Clearly, the policy options discussed in the consultation document are intended to have consequences for citizen-consumers, as they are intended to: contribute to a lessening of the regulatory burden where appropriate, to better enable us to meet our duty to secure the optimal use of the spectrum and to help us to secure a wide range of radio services which taken as a whole are both of high quality and calculated to appeal to a variety of tastes and interests. None of the proposed policy options are considered to have consequences which differ according to people's racial group. Moreover, there is no evidence that any of the policy options would discriminate unlawfully, directly or indirectly against people from some racial groups. Finally, there is also no evidence that people from some racial groups may have different expectations of the proposals in this consultation.
- A6.3 Responses to this consultation from members of specific ethnic groups raising any particular matters of concern in relation to any of the proposals set out in this consultation will be carefully considered.

Annex 7

Glossary

BA	The Broadcasting Act 1990
CADS	Community Audio Distribution Systems – Short range audio relay services transmitted using Citizens’ Band Radio equipment.
CB Radio	Citizens’ Band Radio – a short range radio service for both hobby and business use. It is designed to be used without the need to have any technical qualifications and not to cause interference to other radio users. Hence, only radios meeting certain specific requirements may be used.
DCMS	Department for Culture, Media and Sport
MoD	Ministry of Defence
Statutory Instrument	A piece of delegated or secondary legislation used to amend primary legislation for example, the Broadcasting Act 1990.
WTA	The Wireless Telegraphy Act 1949 (as amended)