



Local commercial analogue radio licence durations

Consultation on proposed changes to Ofcom's policy

Consultation

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Section 1

Executive Summary

- 1.1 Ofcom is responsible for the licensing of local commercial analogue radio stations. This includes re-advertising, re-awarding and renewing licences in accordance with relevant legislation.
- 1.2 When Ofcom advertises a local commercial analogue radio licence, or re-advertises such a licence when it nears its expiry date, it can set a licence length of up to twelve years. Our current policy, which we consulted on in 2007, is that re-advertised licences will be granted with an expiry date of 31 December 2015 or for five years, whichever is longer. This policy was considered the best option to maintain flexibility ahead of any new legislation regarding digital switchover. The common end date and subsequent shorter licence length were designed to ensure that we would not licence analogue stations far beyond a possible digital switchover.
- 1.3 Where a licensee also provides a service on a relevant DAB multiplex, it is eligible for an uncontested twelve year renewal of its analogue licence. Many licensees have already taken advantage of this. Following the passing of the Digital Economy Act 2010 ("the 2010 Act"), licensees who have already renewed for twelve years may now apply for a further uncontested renewal of up to seven years. This renewal provides an incentive for stations to continue to offer DAB services.
- 1.4 The 2010 Act facilitates a future process of digital switchover. Specifically, it allows the Secretary of State to nominate a date for digital switchover of certain services, and requires Ofcom to vary the length of relevant licences so that they end on that date. This removes the need to set a common end date ahead of any possible digital switchover, and a major rationale for our existing policy of granting licences to 31 December 2015 or for five years.
- 1.5 Consequently this consultation considers the appropriate duration for re-advertised licences, which can be set at a maximum twelve years or for a shorter period.

Licence re-advertisement

- 1.6 There are a number of issues to consider when setting a policy on licence duration. To secure the best range of local commercial radio services, it is useful to have a broad choice of proposed services from which to select a licensee (i.e. competition for licences). At the same time, in order to attract operators to apply for licences in the first place there needs to be the opportunity for them to make a commercial return on their investment. Licence duration may affect both of these factors. We also need to consider how our policy may change radio stations' incentives to offer DAB services and the consequent effect it may have on consumer choice. And we need to take into account how licence duration will constrain the flexibility to make changes to the regulatory framework in the future.
- 1.7 We have identified four main policy options for setting the duration of re-advertised licences. We evaluate each option against the considerations given above.
- 1.8 **Option 1 – a common end date.** Ofcom would set a further common end date for re-advertised licences, and return to the issue when there is greater certainty about a specific switchover date. This might give us a reasonable level of policy flexibility, for example in relation to the licensing framework for any stations remaining on FM. It

would have different effects on station viability, the competition for licences and the incentives of operators depending on how far from any end date a licence was re-advertised.

- 1.9 However, it is still not certain what an appropriate end date would be, and there would be no ability to tailor this end date to changing circumstances.
- 1.10 *This option does not provide consistency for licensees and potential new applicants. Its key benefit – that of flexibility – is diminished in importance by the termination provisions introduced by the 2010 Act. Therefore, we do not believe this represents the best approach.*
- 1.11 **Option 2 – full twelve years.** Ofcom would offer the maximum duration of twelve years for all re-advertised licences.
- 1.12 A full twelve year licence provides the maximum security for licensees (subject to termination for digital switchover).
- 1.13 However, there are two main disadvantages:
 - There could be an incentive for stations currently on DAB to cease broadcasting on the platform and forego their right to an uncontested seven year renewal in return for a new twelve year analogue licence not tied to DAB. They may do this if they believe that the licence would be uncontested in any award process or that they would be highly likely to win any such contest. A reduction in DAB services could be detrimental to listeners.
 - This option licenses stations far into the future, so limiting the flexibility to introduce a new framework for any stations remaining on FM after a digital switchover (or for other unforeseen policy objectives).
- 1.14 *We believe that twelve years could result in the loss of digital services, to the detriment of consumers, and so we do not believe this represents the best approach.*
- 1.15 **Option 3 – fixed length of less than twelve years.** Ofcom would set a different fixed licence length for all re-advertised licences. We consider general trends and some specific lengths within the main consultation.
- 1.16 In general, the longer the duration of licence, the less policy flexibility would be retained for the future. Longer licences would, we suggest, offer a better opportunity for financial viability to licensees, although it is unclear as to whether this is a directly linear relationship. The effect on competition for licences is unclear.
- 1.17 The incentives of stations under this option depend on how closely the re-advertised length matches the length of renewals. Where the re-advertisement length is the same as or less than the renewal length, stations that provide a DAB service are incentivised to continue doing so. Where the re-advertisement length is greater than the renewal length, they may opt for a re-advertisement, possibly ceasing to provide their digital service. The greater the difference between the two lengths, the stronger the incentive (either way).
- 1.18 We believe that seven years provides an appropriate balance between the benefits of shorter or longer licence durations. It retains an element of flexibility by not licensing stations far into the future. Such a length may also give commercial radio stations a

better chance of recovering their total expenditure during the licence period, depending on the way their businesses are structured and planned.

- 1.19 In particular, a seven year option would retain incentives for stations to continue to operate DAB services. Seven years matches the maximum period of newly offered renewals. Stations eligible for renewal would be able to choose between re-advertising their licence (with the risk of competition for the licence) or renewing it (and continuing to provide a DAB service), receiving the same licence length in either case.
- 1.20 *We therefore believe that this option represents the best approach to licence re-advertisement lengths, and a licence length of **seven years** (matching the maximum new renewal for stations offering a DAB service) is our preferred approach.*
- 1.21 We additionally consider **Option 4 – a differential approach**. This suggests that a tiered approach of offering different licence lengths based on a pre-determined set of criteria may be appropriate, based on the fact that there is a wide variety of station size and circumstances. One example of such an approach is offering a different licence length depending on whether a licensee has previously renewed by virtue of providing DAB services.
- 1.22 *However, in our view, the benefits of a differential approach are outweighed by the difficulty of setting criteria that treats all applicants fairly and the potential complexity of such an approach. We do not favour this option, and prefer instead a single fixed licence length, as discussed above.*

Section 2

Introduction

Background – the licensing process

- 2.1 Ofcom is responsible for the regulation of the commercial radio sector. One of our functions in this area is the licensing of local commercial analogue radio stations. This includes advertising, awarding and renewing licences in accordance with relevant legislation.
- 2.2 Under the Communications Act 2003 ("the 2003 Act"), we have a general duty to secure "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". In addition, under the Broadcasting Act 1990 ("the 1990 Act"), we have a duty to secure the provision of "a range and diversity of local services". In order to fulfil these duties, our general approach is to re-advertise existing local commercial analogue licences as they approach their expiry dates.
- 2.3 When Ofcom awards a local analogue radio licence, it can set its length at up to twelve years. Before 2007, Ofcom had generally advertised licences for the statutory maximum of twelve years.
- 2.4 Where we propose to re-advertise a local licence, section 104B of the 1990 Act provides for a preliminary stage, which is designed to identify whether any competing interest from one or more prospective new applicants exists. Initially, rather than publishing a notice of advertisement, we can publish a notice, stating that we propose to grant a further licence in the area, and inviting 'declarations of intent' to apply for the licence. This optional stage is known as 'pre-advertisement', and includes details of the licence such as the frequency, geographical area and licence duration. Declarations of intent are usually invited a year in advance of the current licence expiry date.
- 2.5 If only the incumbent registers an interest, the licence is re-awarded under a 'fast-track' procedure. If there is interest from other potential applicants, the licence is advertised in an open competition, with the applications being assessed against statutory criteria in a 'beauty contest', designed to best meet the needs of consumers.
- 2.6 Some licensees can opt to have their licences renewed rather than re-advertised. A licensee who is providing a local digital sound programme service on a 'relevant' local radio multiplex service is entitled to apply for a renewal of its licence on one occasion for a period of twelve years. Renewals, in contrast to re-advertisements, are uncontested.

Our current policy on licence duration

- 2.7 In our 2007 consultation, *The Future of Radio*¹, we considered the potential for the VHF Band II and medium wave spectrum to be made available for uses other than

¹ The Future of Radio, Ofcom, 17 April 2008, <http://stakeholders.ofcom.org.uk/binaries/consultations/futureradio07/nextphase.pdf>, from paragraph 5.82 onwards

analogue radio broadcasting. Because of this possibility, we proposed that licences should be re-advertised for shortened periods, with a common end date.

- 2.8 We made clear that this approach presented the difficulty of determining an appropriate expiry date, given that Ofcom was not in a position to determine when it might be appropriate to make the spectrum currently occupied by analogue radio services available for re-allocation. However, we concluded that continuing to grant licences for the full twelve year period might inhibit our ability to meet our duties to secure the optimal use of the spectrum. We therefore proposed that licences re-advertised under the existing statutory framework should be granted with an expiry date of 31 December 2015, noting that by this time new legislation offering a greater degree of flexibility might be in place.
- 2.9 In the resulting statement in 2007, *The Future of Radio: the Next Phase*², we acknowledged the arguments made by respondents in relation to this proposal, including the suggestion that a licence may become so short as to dissuade any operator (including the incumbent) from applying. We also considered at what point the costs of running a licence award process became disproportionate when compared with the value of the licence to the successful applicant. We concluded that a licence should be granted for a minimum period of five years, in order to make it long enough to be viable, yet short enough to allow the flexibility to free-up spectrum.
- 2.10 Consequently, we decided that all local commercial radio licences which were re-advertised under the existing statutory framework would be granted for a five year period or with an expiry date of 31 December 2015, whichever was longer. Since publishing our statement we have re-advertised 30 licences under this policy.

Rationale for reviewing our current policy

- 2.11 The previous Government's Digital Britain White Paper of June 2009³ proposed a Digital Upgrade for radio once certain criteria had been met. This policy envisaged 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, would occupy the vacated FM spectrum. Radio services on MW would either upgrade to DAB or, if they are within the ultra-local tier, to FM.
- 2.12 The future of this policy is a matter for Government. The Government has recently expressed its support for this approach, and has set out its expected future work in the Digital Radio Action Plan⁴.
- 2.13 The Digital Economy Act 2010 ("the 2010 Act") facilitates a future process of digital switchover. Specifically, it allows the Secretary of State to nominate a date for digital switchover for certain services and requires Ofcom to vary the length of relevant licences so that they end on that date⁵.

² The Future of Radio – the next phase, Ofcom, 22 November 2007, <http://www.ofcom.org.uk/consult/condocs/futureradio07/nextphase.pdf>, from paragraph 5.15 onwards

³ Digital Britain Final Report, DCMS, June 2009, <http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf>

⁴ Digital Radio Action Plan, DCMS, 8 July 2010, <http://www.culture.gov.uk/publications/7227.aspx>

⁵ Further information is provided in Section 3, Statutory Framework

- 2.14 This new legislation gives increased regulatory flexibility and reduces the need to set a common end date ahead of any digital switchover. As noted above, this was a key rationale for our existing policy. Although the statutory provisions for awarding licences have not changed, Ofcom considers that the introduction of termination provisions in the 2010 Act is so significant that it justifies consideration of whether the current policy on licence duration remains appropriate.

Licence renewals

- 2.15 The 2010 Act introduces⁶ a further renewal of up to seven years for any licensee who has renewed for twelve years⁷, or who provides a digital sound programme service and has had their licence granted after 8 April 2010.
- 2.16 All licences renewed under this section can be varied to end on a date nominated by the Secretary of State for digital switchover of the service. Alternatively, if no date is nominated, notice may be given to Ofcom by the Secretary of State under section 105A of the 1990 Act setting a termination date (of not before 31 December 2015) in relation to such services⁸.
- 2.17 Renewed licences can therefore be terminated either in the event of digital switchover or in the absence of such developments.
- 2.18 Ofcom has discretion to offer these further renewals for a shorter period than seven years. However, we consider that there are sufficiently compelling reasons for adopting the maximum further renewal period, and no such reasons for a shorter one. The licence termination provisions in the 2010 Act and referred to elsewhere in this document mean there is no need to adopt a different (shorter) period in the interests of flexibility. We also consider that a seven year further renewal period offers the best prospects for viability of the relevant stations and of maximising the incentives for the licensees to provide DAB services to the benefit of listeners. We welcome views on whether this proposed period for the further renewals is appropriate and, if not, what is and why.

Scope of consultation

- 2.19 We are consulting on the duration for which local commercial analogue radio licences which are being re-advertised should be granted. Ofcom has the power to set a licence duration of up to twelve years.
- 2.20 This consultation does not cover the re-advertisement process itself or Ofcom's policy on issuing new analogue licences. Similarly, it is not a consultation on digital switchover policy, which is a matter for Government.

Current licence end dates and categories

- 2.21 There are currently 295 licensed analogue local commercial radio stations. These services cover a variety of population sizes, from fewer than 2,000 adults⁹ in places like Ullapool, to over 7 million in the case of most London licences. All stations operate under the same regulatory regime.

⁶ As new section 104AA of the 1990 Act

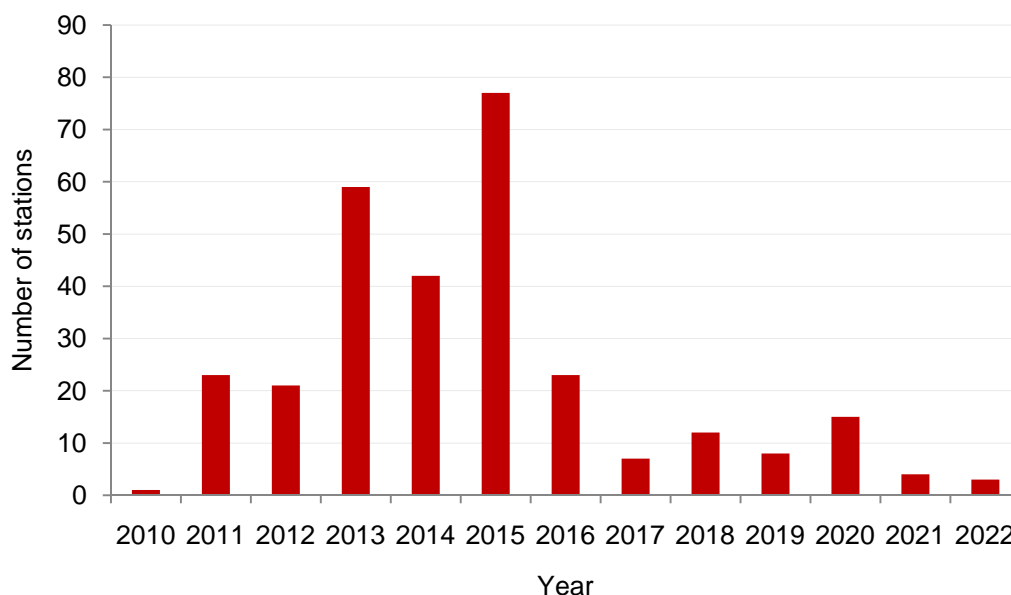
⁷ Licences granted after 8 April 2010 are only eligible for renewal under s104AA of the 1990 Act (see Section 3)

⁸ Further information is provided in Section 3, Statutory Framework

⁹ Aged 15+

- 2.22 Existing licences are expiring on an ongoing basis, with the latest expiry date currently occurring in 2022. Figure 1 below shows when current licences will expire. It does not estimate whether licensees are likely to seek a renewal of their existing licence where they are eligible to do so.

Figure 1 – Local analogue commercial licence expiry dates



- 2.23 Depending on their circumstances, there are a number of different options available to existing licensees on expiry of their licences. They can be broadly categorised in the following manner:
- 147 licensees only operate an analogue service, and as it stands their licences will be re-advertised at the end of the current licence period.
 - 118 licence holders provide services on DAB and have already renewed their licences for twelve years. They are therefore able to take advantage of a further uncontested renewal for their analogue services of up to seven years because of the provisions introduced by the 2010 Act.
 - A further 23 licensees provide local digital sound programme services alongside their analogue service but have yet to renew, which makes them eligible for a twelve year renewal at the end of their current licence period.
 - Finally, there are seven operators whose licences were originally awarded by the Radio Authority, and who have the option of a four year extension to their current licence. One provides a local digital sound programme service and is therefore also eligible for a twelve year renewal. Another licensee has already renewed its licence for twelve years and is therefore also eligible for a further renewal of up to seven years. The remaining five licensees only operate an analogue service.

Other regulatory developments

- 2.24 This consultation should also be seen in the wider context of related Ofcom projects and consultations. The 2010 Act allows limited deregulation of radio content, in particular allowing local stations to co-locate and share programming (effectively, to

merge) within larger areas defined by Ofcom. Following our consultation last year, the statement published on 15 April 2010 sets out our new policy on localness¹⁰.

- 2.25 We are currently conducting consultations on commercial communications in radio programming¹¹, radio multiplex licence renewals¹² and renewals of the Independent National Radio licences¹³.

¹⁰ Statement on commercial radio localness regulation, Ofcom, 15 April 2010,

http://stakeholders.ofcom.org.uk/binaries/consultations/radio/statement/Localness_statement.pdf

¹¹ Broadcasting Code Review: Commercial Communications in Radio Programming, Ofcom, 28 June 2010, <http://www.ofcom.org.uk/consult/condocs/bcrradio2010/>

¹² Radio Multiplex Licence Renewals, Ofcom, 2 July 2010, <http://www.ofcom.org.uk/consult/condocs/radiomux/>

¹³ Renewal of the Independent National Radio licences, Ofcom, 9 July 2010, <http://stakeholders.ofcom.org.uk/consultations/renewal-national-licences/>

Section 3

Statutory framework

Ofcom's general duties

- 3.1 Any decision about the policy which Ofcom should adopt on the re-advertisement of local analogue commercial radio licences needs to be based on consideration of Ofcom's statutory duties and responsibilities.
- 3.2 Ofcom has general duties set out in the 2003 Act.
- 3.3 Our principal general duty 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.
- 3.4 To meet this duty Ofcom is required to secure, among other things:
 - the optimal use for wireless telegraphy of the electro-magnetic spectrum;
 - 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.
- 3.5 In performing the 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.

Ofcom's specific duties and functions: local analogue radio

- 3.6 Under section 85 of the 1990 Act, one of Ofcom's functions is the licensing of national, local and community analogue radio stations.
- 3.7 Section 85 requires Ofcom, in performing those functions, to secure the provision of a range and diversity of local analogue services.

Advertisement and renewal of local analogue radio licences

- 3.8 The statutory framework for the advertisement and renewal of local analogue commercial radio licences is set out in Part III of the 1990 Act, which has been modified by the 2010 Act.

Advertisement

- 3.9 Where Ofcom proposes to grant a local analogue licence it must publish a notice inviting applications as set out in section 104 of the 1990 Act.

- 3.10 Where a local analogue licence is due to expire we may instead publish a notice under section 104B of the 1990 Act stating that we propose to grant a further licence and inviting declarations of intent to apply. If we receive a declaration of intent from a person other than the licence holder we must publish a notice inviting applications under section 104. If we receive a declaration of intent from the licence holder and no other person we must invite the licence holder to apply for the licence.
- 3.11 A licence to provide a local analogue service must be for a period of no more than twelve years (section 86 of the 1990 Act).

Renewals

Twelve year renewal

- 3.12 Before 8 April 2010, a local analogue licence¹⁴ could be renewed on one occasion for a period of twelve years if the applicant nominated a local digital sound programme service provided or to be provided by him and a relevant local radio multiplex service.
- 3.13 After the coming into force of section 32 of the 2010 Act on 8 April 2010, a local analogue licence which was granted before 8 April 2010 may be renewed under section 104A of the 1990 Act on one occasion for a period of twelve years if the applicant nominates a local digital sound programme service provided or to be provided by him and a relevant local multiplex service. A local analogue licence granted on or after 8 April 2010 may not be renewed under section 104A.
- 3.14 An application for renewal under section 104A may not be made before Ofcom publish a notice inviting applications for a licence to provide a relevant local radio multiplex service or more than 3 years before the licence would otherwise expire, and may not be made less than 3 months before the date Ofcom would need to publish a notice if we were to grant a fresh licence to provide the service.

Renewal of up to seven years

- 3.15 Following the coming into force of section 32 of the 2010 Act, a local analogue licence¹⁵ which has been renewed for twelve years under section 104A or which is granted on or after 8 April 2010 may be renewed under section 104AA of the 1990 Act on one occasion for a period of not more than seven years.
- 3.16 The applicant must nominate a local digital sound programme service provided or to be provided by him and a relevant local multiplex service. Alternatively, under new section 104AB of the 1990 Act, in the case of a licence approved by Ofcom (an 'approved licence')¹⁶, an applicant may make a 'national nomination', i.e. he may nominate a national digital sound programme service provided or to be provided by him and a national radio multiplex service.
- 3.17 An application for renewal may not be made more than 3 years before the licence would otherwise expire, and may not be made less than 3 months before the date Ofcom would need to publish a notice if we were to grant a fresh licence to provide the service.

¹⁴ Renewals are also available for national licences but are not discussed in this document.

¹⁵ Renewals are also available for national licences but are not discussed in this document.

¹⁶ The current list of approved licences is set out in

<http://www.ofcom.org.uk/consult/condocs/radio/statement/Addendum.pdf>

Extension and renewal of pre-transfer local analogue licences

- 3.18 Under section 253 of the 2003 Act, a person who holds a pre-transfer local licence (i.e. one which was granted before the radio transfer date¹⁷ and which has not been modified under section 253 or renewed at any time on or after that date) is entitled to apply to Ofcom for a 4 year extension of the licence.
- 3.19 An application may not be made more than 3 years before the licence would otherwise expire, or less than 3 months before the date we would need to publish a notice if we were to grant a fresh licence to provide the service.
- 3.20 A pre-transfer local licence (including one for a period extended under section 253 of the 2003 Act) may not be renewed under section 104A of the 1990 Act if it has already been renewed under this section before the radio transfer date. Otherwise the renewal provisions described above apply.

Termination of local analogue licences

- 3.21 Section 86 of the 1990 Act provides that Ofcom may vary the period for which a licence is to continue in force only if the licence holder consents. However this does not affect the operation of the following provisions which have been inserted into the 1990 Act by the 2010 Act.

Digital switchover

- 3.22 The Secretary of State may give notice to Ofcom under new section 97A of the 1990 Act, nominating the date for digital switchover for the post-commencement services specified in the notice. A 'post-commencement service' is a local, national or additional service that is provided under a licence that was granted on or after 8 April 2010 or which has been renewed under section 103B (national licences) or section 104AA (renewal of local licences for up to seven years). The Secretary of State may nominate different dates for different services and may withdraw a nomination.
- 3.23 After a date for digital switchover has been nominated, section 97B provides that if the licence to provide the post-commencement service expires after the date for digital switchover, Ofcom must vary the licence so that it expires on or before that date. However Ofcom may not shorten the licence period so that it ends less than 2 years after the date on which it gives notice of the variation unless the licence holder consents. If the licence expires on or before the date for digital switchover, Ofcom may not vary it so that it expires after that date.

Variation of licence period following renewal

- 3.24 If the Secretary of State has not nominated a date for digital switchover of a relevant renewed service or has withdrawn the nomination, he may give notice to Ofcom under new section 105A of the 1990 Act fixing a termination date in relation to that service. A 'relevant renewed service' is a national service provided under a licence which has been renewed under section 103B or a local service provided under a licence that has been renewed under section 104AA (renewal of local licences for up to seven years). Different dates may be fixed for different services but the termination date may not be before 31 December 2015.

¹⁷The date on which the Radio Authority's functions under Part III of the 1990 Act were transferred under the 2003 Act to Ofcom, i.e. 29 December 2003

- 3.25 If the licence to provide a relevant renewed service expires after the termination date fixed for the service, Ofcom must vary the licence so that it ends on or before that date. However Ofcom may not shorten the licence period so that it ends less than 2 years after the date on which they give notice of the variation unless the licence holder consents. If the licence expires on or before the termination date, Ofcom may not vary it so that it expires after that date.
- 3.26 The Secretary of State must consider, before 31 December 2013, whether to exercise the powers in section 105A.

Section 4

Policy options and analysis

- 4.1 In this section we present the policy options we are consulting on, assessing the impact of these options before indicating our preferred choice and setting out our reasons for this proposal. As noted, the scope of this consultation is to determine the duration for which local analogue commercial licences which are being re-advertised should be granted.
- 4.2 This section, when read in conjunction with the rest of this consultation document, represents an Impact Assessment as defined by section 7 of the 2003 Act. Given the nature of the issues under consideration, at this stage our assessment of the impact on stakeholders is largely qualitative in nature. We would encourage respondents to submit any quantitative evidence they might have to support the arguments they make in response to this consultation.
- 4.3 We are required by statute to have due regard to any potential impacts our proposals in this consultation may have on race, disability and gender equality – an Equality Impact Assessment (“EIA”) is our way of fulfilling this obligation.¹⁸ Ofcom has considered whether it is required to undertake a full EIA for this consultation. On the basis of our initial EIA screening we have determined that this is not required.

Citizen / consumer interest and policy objective

- 4.4 Our principal general duties – 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 – are key considerations in assessing the impacts of our proposals.
- 4.5 Having due regard to these duties and others set out in legislation¹⁹, our objective is to ensure that there is a range and diversity of local commercial radio services available, serving the interests of consumers and citizens. We aim to determine an appropriate approach to the duration of re-advertised licences to support this objective.
- 4.6 We also have due regard to our key statutory duty of securing the optimal use of the radio spectrum to promote the interests of citizens and consumers. It may be that at some point in the future the optimal use of the VHF Band II and medium wave spectrum is for other applications, rather than for radio broadcasting services, and our assessment below takes this into account.

Criteria to consider and assessment approaches

- 4.7 To secure the best range of local commercial radio services, it is useful to have a broad choice of proposed services from which to select a licensee (i.e. competition for licences). At the same time, in order to attract operators to apply for licences in the first place there needs to be the opportunity for them to make a commercial return on their investment. Licence duration may affect both of these factors. We also

¹⁸ See section 71(1) of the 1976 Race Relations Act (as amended), section 49A of the 1995 Disability Discrimination Act (as amended), and section 76A(1) of the 1976 Sex Discrimination Act (as amended).

¹⁹ See Section 3, Statutory Framework

need to consider how our policy may change radio stations' incentives to offer DAB services and the consequent effect it may have on consumer choice. And we need to take into account how licence duration may constrain the Government's flexibility to make changes to the regulatory framework in the future. Below we outline the criteria, related to these issues, that we propose to use to assess the impacts of our policy options on different stakeholders.

Flexibility

- 4.8 We need to take into account the possibility that there may be a case for making changes to the regulatory framework for commercial radio in the future. For example, if, in the event of digital switchover, small local commercial stations and community stations occupied the vacated FM spectrum, there might be a need to review the regulatory framework for these stations.
- 4.9 Certain approaches to licence duration could give us greater flexibility to further the interests of citizens and consumers in the future, although the relative importance of flexibility is perhaps diminished by the provision for termination for digital switchover introduced by the 2010 Act²⁰.

Viability

- 4.10 A licence has to offer applicants the opportunity to make a return on their investments (i.e. an opportunity to achieve viability), to ensure that operators are prepared to apply for the licence and can maintain provision of a service. We are conscious that any decision on licence duration could have an effect on the financial viability of stations and therefore the variety of services available to listeners.
- 4.11 When setting our current policy, we noted that business plans included as part of applications to Ofcom for commercial radio licences generally anticipated making an annual operating profit by year three of the licence period. This was one consideration in deciding to set a minimum licence duration of five years – we were mindful of the fact that we needed to make such licences '*long enough to be viable*'.²¹
- 4.12 We include at Annex 5 a more detailed assessment of the different cost categories applicable here. Specifically, we consider the impact licence duration may have on capital investment, business contracts and recouping initial start-up costs.
- 4.13 Considerations about the financing of a station and the potential return on investment are likely to be particularly important to potential new entrants (as opposed to incumbents), who may need time to establish their operation, promote their brand, attract an audience etc.
- 4.14 We recognise that the exact relationship between licence duration and the viability of a station is unclear. It may be that there is a linear relationship between the two – the prospect of viability for a station becomes ever more likely as licence length increases. Alternatively, given the lifespan of certain assets which need to be replaced, it may be that there is a particular licence length at which a station becomes viable, and allowing a longer licence duration does not significantly affect this.

²⁰ See paragraphs 3.22-3.26 above

²¹ See Future of Radio – the next phase,

<http://stakeholders.ofcom.org.uk/binaries/consultations/futureradio07/nextphase.pdf>, paragraph 5.19.

Question 4.1 Do you agree with our general assessment of the relationship between licence length and economic viability? If not, what other evidence should we consider?

Competition for licences

- 4.15 Licence duration also governs the frequency with which licences are re-advertised and therefore the frequency with which station operators can engage in competition for licences.
- 4.16 Re-advertising licences is a useful mechanism to make sure that radio stations are effectively serving consumer needs. While stations can obviously apply to change their original formats over the course of a licence, re-advertising the licence allows a diversity of applications for a licence to be submitted and assessed as part of the competitive selection process, with a choice as to which best meets the needs of listeners.
- 4.17 There is likely to be a trade-off between setting a licence duration long enough to encourage a number of applicants for a re-advertised licence, and one short enough to afford regular opportunities for the competitive selection process.
- 4.18 Competition for licences can also occur through the purchase of existing radio stations. This may happen when a new entrant sees a better way of serving and attracting listeners. So this form of competition may also bring about consumer benefits. Licence duration is likely to have some effect on this type of competition for licences, as it will affect the attractiveness of existing stations to potential buyers (see section on viability above).

Incentives

- 4.19 There may be a number of different options open to stations whose licences are due to expire, and the duration of licence granted after re-advertisement will affect operators' incentives in this regard.
- 4.20 DAB digital radio is currently the only platform which offers the benefits of digital radio free-to-air, to mobile and portable receivers, and which can guarantee a range of local and UK-wide services to the vast majority of the UK. Because of these consumer benefits, we have previously stated that it is important to put in place the conditions to allow DAB digital radio to expand and thrive in the digital age.²² It is therefore important to consider how our policy on licence duration may change the incentives of stations to continue to provide DAB services.
- 4.21 Some stations are already providing services on DAB and have had their analogue licences renewed for twelve years. Going forward, they are able to take advantage of a further uncontested renewal (of up to seven years) because of the provisions of the 2010 Act²³. Other stations that are currently only providing an analogue service might opt to provide a digital service and thus take advantage of the initial twelve year renewal. There is also a group of smaller stations which are unlikely to seek to be carried digitally (for example because local DAB multiplexes do not map suitably to their analogue licensed area, or because there is no spare DAB capacity in their licensed area).

²² For example, see paragraph 5.76 of Radio – Preparing for the Future, Ofcom, 19 October 2005, http://stakeholders.ofcom.org.uk/binaries/consultations/radio_review2/p2.pdf

²³ See 3.15-3.18 above

- 4.22 Our policy on licence duration could distort the incentives for these different categories of stations. We are mindful of the need to settle on a policy that does not dramatically impact or alter the commercial decisions of operators in this regard by actively incentivising stations to withdraw from DAB.

Question 4.2: Do you agree with the criteria against which each of the options will be assessed? If not, what are the additional criteria that we should take into consideration, and why are they relevant to our analysis?

- 4.23 The options we outline below are evaluated against these criteria. We note the impact they may have on radio listeners, radio stations (incumbents and new entrants), and radio mux operators. We do not specifically discuss the impact on radio advertisers as our starting assumption is that the impact should be broadly neutral (given that they would still have access to the basic advertising medium). We would welcome any comments on this assumption.

Option 1: a further common end date

- 4.24 Our decision in 2007 to adopt a common end date for all re-advertised licences was in part prompted by the desire to retain flexibility for the sector. By opting not to issue licences far into the future, we were guarding against constraining the regulatory framework should Government decide to implement a digital switchover policy.
- 4.25 Although the 2010 Act provides the legislative means to facilitate a digital switchover, there is still a degree of uncertainty around the future regulatory environment for analogue radio. Consequently, there may be a case for setting a further common end date and returning to the issue when we have greater clarity.
- 4.26 In 2007 we highlighted several difficulties with this approach which remain pertinent. In particular, there is no firm indication at present as to what an appropriate end date would be, and we would not be able to tailor this end date to changing circumstances.
- 4.27 As indicated above, Ofcom may only terminate licences designated for digital switchover by the Secretary of State. Government has suggested that a large number of local commercial stations would remain on analogue frequencies until their licences expired. Setting a new common end date would give Government the policy **flexibility** to construct a new regulatory framework for the remaining local commercial analogue stations.
- 4.28 The effect on **viability** would be varied. We assume that licences that are re-advertised near to a designated common end date are likely to be less attractive propositions for operators, as they are less likely to give a sufficient opportunity to generate a return²⁴. As before, we would probably need to set a minimum licence duration to ensure that stations could become viable and so applications were received, or risk spectrum being left fallow (which is likely to be inconsistent with some of our key statutory duties).
- 4.29 Because viability is likely to depend upon proximity to the common end-date, the impact of a common end date on the **competition for licences** is unclear. Potential operators would be likely to make a decision on whether to apply for licences based

²⁴ However, it is unclear whether the relationship between licence duration and economic viability is a directly linear one. See discussion at paragraph 4.14

on the attractiveness of the licence (which as suggested above would vary depending on how far away any end date was).

- 4.30 As with our current policy, the impact on **incentives** of licensees/applicants to offer DAB services could depend on how close their expiry date is to any fixed end date. For instance, some licences might be granted for a period far greater than the maximum seven years offered under the new renewal process, and licensees might consequently opt for re-advertisement rather than renewal. In this scenario, they might cease to provide a digital service.
- 4.31 Overall then, this option might give us a reasonable level of policy flexibility. However, the impact on station viability, competition for licences and operators' incentives would depend on how far from the end date a licence was re-advertised.

Question 4.3 Do you agree with our assessment of the common end date option? If not, what additional factors should we take into consideration, and why are they relevant to our analysis?

Option 2: a full twelve year licence for all re-advertised licences

- 4.32 Before adopting our current policy in 2007, Ofcom licensed analogue stations for the statutory maximum of a twelve year period. Given that the provisions of the 2010 Act have removed much of the rationale for our current policy, there may be a case for reverting to issuing licences for a full twelve year period.
- 4.33 A twelve year licence duration would reduce the **flexibility** available should there be a decision to consider a new regulatory framework. Adopting a twelve year policy for re-advertised licences would mean we were licensing services far into the future. Although licences would be subject to termination should the Secretary of State designate them for digital switchover, it might be appropriate to regulate a remaining small scale analogue sector differently – this option could constrain the ability to do this.
- 4.34 One possible benefit could be the impact on station **viability**. Licensees would have the maximum permissible period within which to make a return on their investment, allowing sufficient time for full recovery of sunk costs and other outlays. This could also be quite a significant encouragement for new entrants, giving them over twice as long as under our current policy to earn a return on their investments.
- 4.35 However, as noted at 4.14, it is unclear whether the relationship between licence duration and economic viability is a directly linear one. For instance, a twelve year licence length may mean that an operator has to undertake capital expenditure to replace assets over the duration of the licence.
- 4.36 It is worth noting that all licences awarded from 8 April 2010 are subject to the termination provisions in the 2010 Act. Any benefits in terms of viability are therefore uncertain, reducing the importance of this factor.
- 4.37 We consider the overall effect on **competition for licences** to be unclear. On the one hand, the maximum licence duration would restrict the opportunity for new entrants to submit applications for licences – incumbents would only face a contested re-advertisement every twelve years. However, a longer licence might prove a more attractive proposition for potential operators looking to enter the market by acquiring an existing station, giving more time to rebrand, develop output, attract new listeners

and so on. A twelve year licence might therefore encourage more new entrants to try and purchase existing radio stations.

- 4.38 The key impact of offering a full twelve year period for all re-advertised licences is likely to be on the **incentives** of radio stations to provide DAB services. Because of the potential benefits in terms of viability detailed above and the greater level of security, licensees might favour a twelve year licence duration over the maximum seven year period they could obtain through a renewal. Consequently, stations that provide digital services might be more likely to risk the re-advertisement process and might withdraw from DAB, resulting in the range of services available to listeners diminishing. DAB mux operators may also lose revenue from a reduction of DAB services, and may not be able to invest as much in infrastructure in the future.

Question 4.4 Do you agree with our assessment on the full twelve year option? If not, what additional factors should we take into consideration, and why are they relevant to our analysis?

Option 3: a fixed licence duration of less than the full twelve years for all re-advertised licences

- 4.39 Even if we were not to adopt the full twelve year licence period as outlined in option 2, we are still at liberty to re-advertise licences for a fixed duration now that the need for a common end date has diminished. We could set a policy whereby we licensed all analogue stations for the same period, choosing an appropriate duration based on the needs of listeners.
- 4.40 We consider under this option the effect that longer or shorter licence lengths would have on our criteria in general. We then highlight some specific periods which have particular significance – our *de facto* existing policy of five years and a seven year policy which matches the maximum DAB renewal contained within the 2010 Act.

General trends

- 4.41 A shorter licence duration would retain more **flexibility** should changes to the regulatory framework for commercial radio be deemed appropriate. Conversely, a longer licence length would reduce the flexibility available by licensing further into the future and restricting the potential for a new framework to be adopted.
- 4.42 This flexibility is arguably less important as a result of the 2010 Act, as designated licences granted after 8 April 2010 may be varied to end on a nominated date for digital switchover. However, there may still be value in the flexibility provided by shorter licence periods for other objectives, in particular in relation to any new approach to licensing stations that remained on analogue bands after a digital switchover.
- 4.43 A key impact of shorter licence durations could be on station **viability**. The costs and revenue of a radio station are likely to change over time. We provide more detail on this in Annex 5. Particularly short licence durations may have a damaging effect on the financing of a station and the ability for operators to generate a return on their investment, to the detriment of listeners. A longer licence duration might increase the economic viability of a radio station²⁵.

²⁵ As has been highlighted, it is unclear whether the relationship between licence duration and economic viability is a directly linear one. See discussion at paragraph 4.14.

- 4.44 We noted when setting our current policy that most licence applicants estimated making an annual operating profit by year three of the licensing period. We are, however, aware of the more challenging operating environment that the radio industry has faced in recent years, and so recognise that these forecasts may be at the lower end of estimates.
- 4.45 The effect on **competition for licences** of longer or shorter licence durations is unclear. Shorter licence lengths would mean more frequent rounds of competition, allowing new entrants the opportunity to apply for licences. The potential for a 'refreshing' of services could deliver a benefit for listeners, giving regular opportunities for the selection of a service that most meets their needs.
- 4.46 However, as noted above, shorter licence durations may not give new entrants a reasonable opportunity to earn a return on their initial investment. Moreover, because of the 'beauty contest' nature of the comparative selection process, the benefit to listeners of more frequent re-advertisements depends more on the choice of station at award stage than the frequency of competition.
- 4.47 Shorter licence periods may hinder the trade in existing stations/licences: there would be less time to rebrand the station or request a change of format to the benefit of consumers. Shorter licence durations may therefore discourage this aspect of competition.
- 4.48 Longer licence durations will give fewer opportunities to enter the market through the re-advertisement process. But the value of a longer licence may encourage more entry when licences are re-advertised, or more entry through the acquisition of existing stations. That could result in a better outcome for listeners. Overall, we consider the effect of shorter or longer licence durations on competition for licences is unclear.
- 4.49 The **incentives** of stations to provide DAB services under this option depend on how the licence duration relates to the length of newly offered renewals. If the re-advertisement length was the same as or less than the maximum renewal length of seven years, stations that provide a DAB service would be incentivised to continue doing so, retaining the full benefits for consumers of a diversity of services. If the re-advertisement length was longer than the renewal length, these stations may opt for a re-advertisement, possibly ceasing to provide their digital service.
- 4.50 The greater the difference between the duration of re-advertised licences and renewals, the stronger the incentive either way. So for licence durations significantly shorter than seven years, there would be even more reason for stations to opt for a renewal. The longer a licence was above seven years, the more incentive a station would have to choose for their licence to be re-advertised, despite the contested nature of the process.
- 4.51 We examine below two specific licence durations, but we consider that the overall analysis should help guide the assessment of a wider range of licence lengths.

Five years

- 4.52 If we do not change our current policy then licences which expire at the end of 2010 onwards will be re-advertised for five years. We note that existing stations have continued to re-apply for licences despite a shortened licence duration arising from a common end date. This might suggest that there is no compelling reason to move from our policy.

- 4.53 As a short licence period, five years retains a significant level of **flexibility**. If we re-advertised licences for five years, we would not be constraining Government by issuing licences far into the future when the regulatory environment might look quite different.
- 4.54 It is difficult to assess in full the impact a continued five year licence duration policy would have on station **viability**. Incumbents have continued to re-apply for their licences despite their shortened licence length, and our analysis provided in Annex 5 highlights that business plans submitted by applicants are constructed on the basis of earning a return on investment over a five year period. However, we recognise that in some cases this might be slightly longer given the recent financial challenges facing the sector.
- 4.55 Five year licences would mean more regular rounds of competition and so could encourage more **competition for licences**. This could deliver a benefit to listeners, allowing new entrants opportunities to apply for licences and a greater frequency of competitive processes where applications can be assessed in relation to listener needs.
- 4.56 However, shorter licence durations may not give licensees a reasonable opportunity to earn a return on their initial investment. The frequency of the competitive process may increase, but it may be that few or no applicants contest this.
- 4.57 Ofcom has not presided over any contested re-advertisements under the current policy. Five years - to some degree at least - does not appear to create conditions which new entrants view as favourable for contesting re-advertised licences. With fewer potential applicants, there is not a choice from which to select the service that best meets consumer needs. On balance, we consider that the effects on competition for licences are unclear.
- 4.58 By keeping the licence period the same, there would be little change to the current **incentives** to continue to provide DAB services. Given a maximum seven year renewal under section 104AA of the 1990 Act, stations currently operating a digital service would be incentivised to continue doing so (receiving a longer licence duration through a renewal than a re-advertisement, and avoiding a competitive process).
- 4.59 However, we recognise that for those stations that do not provide DAB and are unlikely to at any point in the future, this would serve to grant them a shorter licence duration than those licensees who were able to provide a DAB service.

Seven years

- 4.60 The 2010 Act gives Ofcom the power to offer a renewal of up to seven years to stations providing a service on DAB. We therefore view it as appropriate to consider the impact that re-advertising licences for a period of seven years would have on stakeholders. This would represent a two year increase from our current policy of five years.
- 4.61 Longer licence durations would reduce the **flexibility** for Government to change the regulatory framework. However, seven year licences would not reduce this flexibility a great deal compared to five year licences – again, we would not be licensing far into the future and significantly constraining Government should it decide that a new regulatory framework should be enacted.

- 4.62 Station **viability** might increase. Extending the licence duration above five years to seven will give both incumbents and new entrants a greater time to earn a reasonable return on their initial investment.
- 4.63 As with five year licences, the effect on **competition for licences** is unclear. Seven year licences would mean less frequent opportunities for competitive selections than five year licences. However, they may also encourage more applicants when licences are re-advertised or more entry through the acquisition of existing stations.
- 4.64 A seven year option should avoid distorting **incentives** for stations to continue to operate DAB services. Adopting a length of seven years matches the duration of re-advertised licences to the maximum period of renewal offered under section 104AA of the 1990 Act. Stations eligible for renewal would be able to choose to have their licence re-advertised (with the risk of competition for the licence) or renewed (and continuing to provide a DAB service), receiving the same licence length in either case.
- 4.65 Seven year licences are therefore unlikely to reduce DAB provision significantly, or at all. Moreover, this would be a consistent approach whereby stations that do not provide a digital offering would be afforded the same licence length as those stations who took advantage of a renewal.

Question 4.5 Do you agree with our assessment of the fixed licence length option? If not, what additional factors should we take into consideration, and why are they relevant to our analysis?

Summary of the impacts of twelve, seven and five year licences

- 4.66 The table at Figure 2 below sets out a comparison between twelve, seven and five year licence periods set out in options 2 and 3 above. It is intended to provide an indication of the relative performance of each of the different licence durations rather than an absolute measure.
- 4.67 The table serves to illustrate the trade-off between policy flexibility and station viability: while longer licences may increase station viability, they will tend to reduce policy flexibility.
- 4.68 In terms of the impact on incentives to provide DAB, the table ranks five and seven year licences above twelve year licences. As discussed above, longer licence periods could have an adverse impact on radio stations' incentives to provide DAB services and could make some more likely to withdraw from the platform.

Figure 2 **Impact summary**

Criteria	5 years	7 years	12 years
Policy flexibility	✓✓	✓✓	✓
Station viability	✓	✓✓	✓✓
Competition for the licences	-	-	-
Incentivises stations to retain DAB services	✓	✓	✗

Note: '✓' means the licence length has a positive impact on the criterion (more ✓'s mean a more positive impact); '✗' means we have a concern (e.g. twelve year licences may significantly change the incentives for radio stations to provide DAB services); '-' means it is unclear whether the impact will be positive or negative.

Option 4: a differential approach, with licence length set in relation to a station's circumstances

- 4.69 The analysis in option 3 represents a general consideration of the effect on the criteria we have identified of different licence lengths.
- 4.70 The local commercial radio market is, however, particularly diverse. Each station operates in a distinct locality, with its own unique coverage area, target demographic and competitors. Some have the advantages of synergies deriving from common ownership. The criteria that we have assessed our options against may have more importance for some stations than for others. For example:
- some smaller stations might have more difficulty generating advertising revenues than larger competitors, with their smaller coverage area being less attractive to advertisers. Such stations might need a longer licence length to have a reasonable opportunity to earn a return and ensure their **viability**²⁶.
 - new entrants are also more likely to need a longer licence period than the incumbents require, in order to establish their business and build an audience. Longer licences for potential applicants might therefore encourage **competition for licences**.
 - a number of stations are unlikely to be carried digitally, either because of their size, or because local DAB multiplexes do not map suitably to their analogue

²⁶ However, it is unclear whether the relationship between licence duration and economic viability is a directly linear one. See discussion at paragraph 4.14

licensed area or have no spare capacity. The duration of re-advertised licences is unlikely to impact on the **incentives** of these stations, given that digital carriage is not an option for them.

- 4.71 Licence duration might therefore have an asymmetric impact on different stations. A more 'bespoke' approach which is more closely linked to the circumstances of individual stations might be appropriate.
- 4.72 The most radical version of this approach would be to consider what licence length to set on a case-by-case basis, taking into account factors such as the level of interest, the size of the coverage area, the digital options available etc.
- 4.73 Clearly such an approach would be very difficult to implement in practice. Ofcom would have to set out specific criteria against which licence lengths would be considered, and assess these in the case of every licence. Such an approach would increase regulatory cost – there could be inconsistency, and perceived unfairness.
- 4.74 An alternative could be a differential approach, offering different licence durations for re-advertised licences depending on a single pre-determined criterion. This would likely be easier to implement. The 'fairness' of the approach and the applicability of the criterion would be key considerations.
- 4.75 We consider below an example of such a criterion, suggested to us by a licensee. We welcome views on this specific example, or other suggestions.

Differential example – previous digital presence

- 4.76 One criterion for a tiered approach might be whether previous holders of that licence have provided digital services and taken up renewal options. Any licence that has previously been the subject of a twelve year renewal could be offered (say) a seven year licence length, whilst all other licences would be offered for a period of twelve years.
- 4.77 Non-DAB stations would benefit from a long licence duration, which would probably serve to make the licence more attractive to operators. There would, however, be less policy flexibility, with these stations being licensed far into the future.
- 4.78 Licensees that had already taken advantage of a twelve year renewal would not be incentivised to seek re-advertisement, abandoning digital broadcasting in the process, as they would receive the same licence length through an uncontested renewal.
- 4.79 However a tiered policy based on DAB provision would take back some of the renewal benefits a station had gained by offering DAB – they would lose out relative to other licensees for choosing not to provide a digital service anymore. Furthermore, any new applicants for these licences would have their licence duration determined on the basis of the decisions of previous licensees.

Question 4.6 What are your views on the differential option example we present above? Are there any other criteria you believe we should examine in considering a differential approach?

Summary of options and preferred choice

- 4.80 Under **option 1**, Ofcom would set a further common end date for re-advertised licences, and return to the issue when there is greater certainty about a specific switchover date. This might give us a reasonable level of policy flexibility, for example in relation to the licensing framework for any stations remaining on FM. It would have different effects on station viability, the competition for licences and the incentives of operators depending on how far from any end date a licence was re-advertised.
- 4.81 However, it is still not certain what an appropriate end date would be, and there would be no ability to tailor this end date to changing circumstances.
- 4.82 This option does not provide consistency for licensees and potential new applicants. Its key benefit – that of flexibility – is diminished in importance in light of the termination provisions introduced by the 2010 Act. Therefore, we do not believe this represents the best approach.
- 4.83 **Option 2** would see Ofcom setting the length of all new or re-advertised licences at the full twelve years. This would provide the maximum security for licensees, subject to termination for digital switchover.
- 4.84 This option licenses stations far into the future, so limiting the flexibility for Government to introduce a new framework for any stations remaining on FM after a digital switchover (or for other unforeseen policy objectives).
- 4.85 There could be an incentive for stations currently on DAB to cease broadcasting on the platform and forego their right to an uncontested seven year renewal in return for a new twelve year analogue licence not tied to DAB. They may do this if they believe that the licence would be uncontested in any award process or that they would win any such contest. A reduction in DAB services could be detrimental to listeners.
- 4.86 We believe that twelve years could result in the loss of digital services, to the detriment of consumers, and so we do not believe this represents the best approach.
- 4.87 **Option 3** envisages setting a different fixed licence length for all re-advertised licences, less than the maximum twelve years permissible. We have considered general trends and some specific lengths in the analysis section above.
- 4.88 In general, the longer the duration of licence, the less policy flexibility would be retained for the future. Longer licences would, we suggest, offer a better opportunity for financial viability to licensees, although it is unclear as to whether this is a directly linear relationship. The effect on competition for licences is unclear.
- 4.89 The incentives of stations under this option depend on how closely the re-advertised length matches the length of renewals. Where the re-advertisement length is the same as or less than the renewal length, stations that provide a DAB service are incentivised to continue doing so. Where the re-advertisement length is greater than the renewal length, they may opt for a re-advertisement, possibly ceasing to provide their digital service. The greater the difference between the two lengths, the stronger the incentive (either way).
- 4.90 We believe that seven years provides an appropriate balance between the benefits of shorter or longer licence durations. It retains an element of flexibility by not licensing stations far into the future. Additionally, as set out in Annex 5, such a length may give commercial radio stations sufficient opportunity to earn a return on their investments.

As the licence length has an ambiguous effect on competition, we do not place significant weight on this factor.

- 4.91 In particular, a seven year option would retain incentives for stations to continue to operate DAB services. Seven years matches the maximum period of newly offered renewals. Stations eligible for renewal would be able to choose between re-advertising their licence (with the risk of competition for the licence) or renewing it (and continuing to provide a DAB service), receiving the same licence length in either case.
- 4.92 We therefore believe that option 3 represents the best approach to licence re-advertisement lengths, and a licence length of **seven years** (matching the maximum new renewal for stations offering a DAB service) is our preferred option.
- 4.93 We also consider **option 4**, which acknowledges that the radio industry is a particularly diverse one, and that the criteria that we have assessed our options against may have more importance for some stations than for others. It suggests that a differential approach of offering different licence lengths based on a pre-determined set of criteria may be appropriate. One example of such an approach is offering a different licence length depending on whether a licensee has previously renewed.
- 4.94 However, in our view, the benefits of a tiered approach are outweighed by difficulty of setting criteria that treats all applicants fairly and the potential complexity of such an approach.

Proposal

- 4.95 **We propose that all local commercial analogue licences are re-advertised with a length of seven years.**
- 4.96 We would expect to review this policy should the Secretary of State nominate a date for digital switchover, or in the event of other significant radio policy developments.

Question 4.7 Do you agree with our preferred proposal on the approach and length of re-advertised licences? If not, what are the additional factors that we should take into consideration, and why are they relevant to our analysis? What is your preferred approach and why?

Postponement of pre-advertisements

- 4.97 There are a number of stations which were due to be re-advertised within the next few months, while we are consulting on our future policy. Consequently, we will be postponing all the licence 'pre-advertisements' previously scheduled in our re-advertisement timetable²⁷ until a statement is published. Our re-advertisement timetable will be updated in due course.

²⁷ See <http://licensing.ofcom.org.uk/radio-broadcast-licensing/analogue-radio/apply-for-licence/re-advertisement/timetable/>

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 9 September 2010**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/local-licence-duration/howtorespond/form>, 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), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email alistair.law@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Ali Law
Radio Content and Broadcast Licensing
Content and Standards
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3806
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- 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 Ali Law on 020 7981 3118.

Confidentiality

- A1.8 We believe 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. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/account/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in October 2010.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 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, who are less likely to give their opinions through a formal consultation.
- A1.15 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
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email 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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A2.6 A person within Ofcom 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. Ofcom's '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.

After the consultation

- A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, 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 and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- 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 coversheet 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 via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. 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

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, 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 that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. 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

Question 4.1 Do you agree with our general assessment of the relationship between licence length and economic viability? If not, what other evidence should we consider?

Question 4.2: Do you agree with the criteria against which each of the options will be assessed? If not, what are the additional criteria that we should take into consideration, and why are they relevant to our analysis?

Question 4.3 Do you agree with our assessment of the common end date option? If not, what additional factors should we take into consideration, and why are they relevant to our analysis?

Question 4.4 Do you agree with our assessment on the full twelve year option? If not, what additional factors should we take into consideration, and why are they relevant to our analysis?

Question 4.5 Do you agree with our assessment of the fixed licence length option? If not, what additional factors should we take into consideration, and why are they relevant to our analysis?

Question 4.6 What are your views on the differential option example we present above? Are there any other criteria you believe we should examine in considering a differential approach?

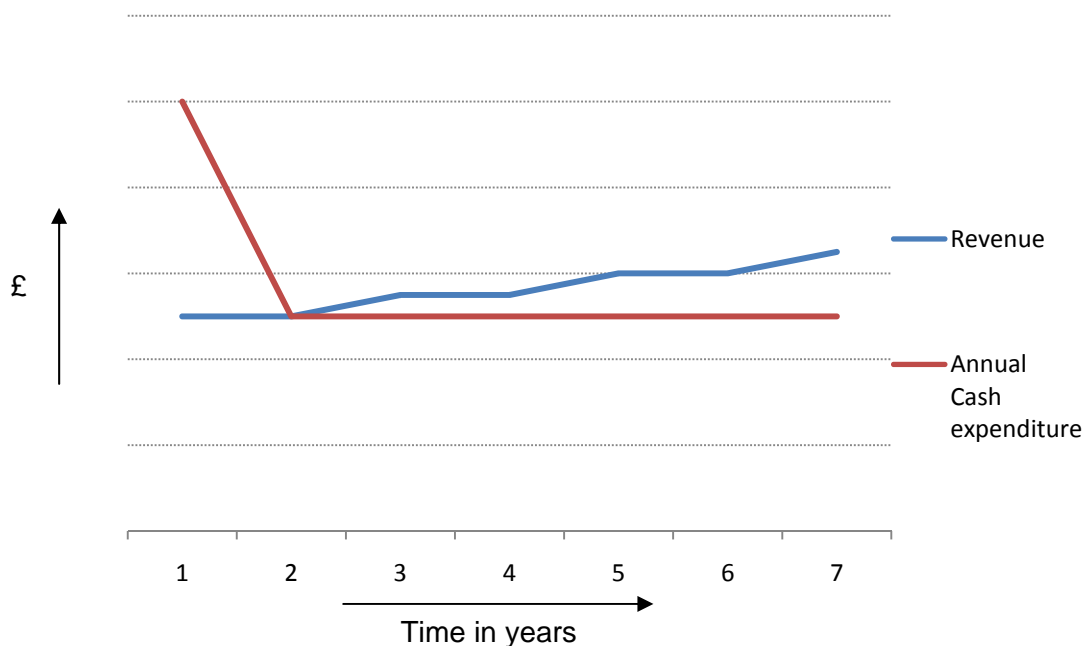
Question 4.7 Do you agree with our preferred proposal on the approach and length of re-advertised licences? If not, what are the additional factors that we should take into consideration, and why are they relevant to our analysis? What is your preferred approach and why?

Annex 5

Commercial Issues

Introduction

- A5.1 The length of time for which a local analogue licence is granted has implications for the commercial viability of the broadcasting radio station.
- A5.2 A radio station is said to be economically viable if the revenues received over the licence period are more than the costs incurred over that period.
- A5.3 If the radio broadcaster is a new entrant, the revenues may increase over time as the station establishes a listener base and reputation.
- A5.4 Conversely the costs a radio station incurs may be higher in the early years as one-off capital purchases are required and initial start-up activities need to be carried out.
- A5.5 Below is an illustrative graph of a typical local analogue radio station which shows the annual cash expenditure and revenues of a radio station against the number of years it has been broadcasting.



- A5.6 This annex will focus on the following three points
- Capital investment: some of the initial capital equipment a radio station requires will last for several years. Normally the costs of this equipment should be recovered over the equipment's useful life. However if the licence period is shorter than the useful life then the costs of the assets will need to be recovered

over the shorter period of the licence thus requiring higher revenues to break even in this period.

- **Business contracts:** in order to broadcast, a radio station will need premises, a transmission system, and various other activities carried out. The radio broadcaster may choose to contract with third parties to provide these services. The third party suppliers may offer lower annual fees in exchange for commitments to longer contract periods. However the contracts a radio station signs cannot exceed the licence period.
- **Initial start up activities:** a radio station commencing operations will perform a number of activities in the first years that once established it will not have to repeat. For example it will incur marketing costs establishing the brand and listener base. A longer licence period will allow these initial costs to be recovered over a longer period during which more revenue may be generated. This could reduce the risk of the venture because it will enable radio stations to have a longer period over which they can recover these initial costs.

Typical local analogue commercial station

A5.7 There is a wide range of local analogue commercial radio stations. The financial return these stations typically receive varies considerably. Some return sustained financial profit, whilst some continue broadcasting despite incurring financial losses.

A5.8 The broad range of these stations can be seen in the measures shown below:

Measure	Local analogue station (no DAB coverage)
Measured coverage area (MCA)	Up to 350,000 people
Annual revenues	Up to £2 million
Annual profits/losses	ranging from +£350,000 profit to - £200,000 loss
Number of Staff	ranging from 7 to 20 direct staff
Business planning cycle	5 years (taken from licence applications)

Costs spread over time and business contracts

A5.9 Broadcasting activities: Ofcom commissioned a UK radio 'flow of funds' report in May 2009.²⁸ Within this report the costs a 'typical' local radio station would incur was discussed. The table below is a summary table from this report.

²⁸ UK Radio Impact of regulatory relaxations, Ofcom, 5 May 2009, <http://stakeholders.ofcom.org.uk/binaries/consultations/radio/annexes/annex8.pdf>

<i>Cost Category</i>	<i>Constituent cost</i>	<i>% of Annual accounting costs</i>
Sales and marketing	External commission	1%
	In-house sales costs	15%
	Station marketing costs	6%
Transmission	Transmission	12%
Production	Programming	15%
	Commercial production	4%
Rights	Rights	9%
General & Admin	General & Admin costs	37%

- A5.10 The business planning timeframe: The costs a radio station incurs over time should be planned in advance to ensure optimum business efficiency and management. Due to the way costs may be incurred it may be preferable for a radio station to plan certain costs over certain timeframes to ensure the most efficient outcome.

The table below suggests possible planning period for activities a radio station performs

<i>Cost Category</i>	<i>Actual Cost</i>	<i>Planning period</i>	<i>Description</i>
Sales and Marketing	Staff	1-3 years	Staff costs are generally planned annually however being able to offer staff greater job security may attract better talent
	Advertising Equipment	1-3 years	Advertising equipment, for example stands may be purchased that could last over a number of years
Transmission	Annual charge	1 year	Annual transmission fees paid to a transmission provider
	Fixed term contract	>5 years	Annual transmission fees paid to a transmission provider under a long fixed term contract
	Fixed capital cost	>5 years	Transmission equipment such as radio antennas purchased and depreciated over a number of years
Production	Staff	1-3 years	Staff costs are generally planned annually however being able to offer staff greater job security may attract better talent

Cost Category	Actual Cost	Planning period	Description
Rights General & Administration costs	Production equipment	1-5 years	Production equipment is generally depreciated over 5 years, however this may last several years longer.
	Rights	1 year	Rights are paid annually with a fixed and variable element
	Staff	1-3 years	Staff costs are generally planned annually however being able to offer staff greater job security may attract better talent
	Property costs	>5 years	Offices and premises could be leased over long periods of time to seek reduced annual charges
	Office equipment	1-5 years	Office equipment is generally depreciated over 5 years

Initial start up activities

A5.11 A radio station must carry out a number of activities before it can go on-air.

A5.12 Below is an example of some of the one-off activities a radio station needs to complete before it can broadcast

- Purchase radio broadcasting equipment
- Find suitable premises
- Employ broadcasting and office staff
- Purchase transmission equipment or seek a third party to provide this service

A5.13 These activities do not need to be repeated once the radio station is broadcasting (although new equipment etc may be required).

A5.14 Local radio stations obtain revenue from three main sources

- National air time advertising. Local radio stations can carry national advertising. The size of this revenue is related to the reach and listener base of the radio station.
- Local business advertising. Local radio stations can obtain advertising revenue from local businesses. The size of the revenue generated is negotiated by the sales staff, however the bigger the audience and the more established the brand the easier it will be for sales staff to negotiate attractive sales deals.
- Sponsorship. Local businesses could sponsor programmes and radio events in return for specific advertising. Again more established radio stations may find it easier to win these types of deals.

- A5.15 As shown above radio stations will have to engage in activities in the early years to ensure they can broadcast. These activities will incur significant costs which will then have to be recovered over the broadcasting period. Additionally radio stations will find it more difficult to attract advertising (the main source of revenue) in the early years of broadcasting when the station does not have an established listener base and client list.

Conclusions

- A5.16 The costs a radio station incurs in the early years of broadcasting will be greater than in later years due to the up-front capital investment and set-up activities the radio station needs to carry out.
- A5.17 The revenue a radio station attracts in the early years of broadcasting may be less than in the later years. This is because revenue is linked to the size of the listener base (which could grow over time) and the local business relationships the radio station establishes (which again could grow over time).
- A5.18 Therefore longer licence periods may increase the economic viability of a radio station as it will have more years of potentially increasing annual revenues to recover the initial up-front costs. This assumes the annual revenues in later years are larger than the annual costs, producing a positive contribution to offset the initial up-front expenditure.
- A5.19 The rate at which the revenue a local radio station generates increases over time (if at all) is very uncertain.
- A5.20 The business plans radio applicants have submitted for past analogue licences suggest initial up-front capital costs and activities required to broadcast are usually depreciated over 5 years, although in some cases this may be slightly longer. This may indicate that the initial costs of these assets are expected to be recovered by the revenue generated over a 5 year period.
- A5.21 The business plans radio applicants submitted for past analogue licences suggest radio stations generally seem to plan their business operations over 5 years. This may be due to the following factors –
- Broadcasting revenues are very uncertain over periods greater than five years
 - Radio stations generally forecast to break even over a five year period
 - Potential investors generally require a return on their investment within 5 years.
- A5.22 Radio stations may engage in contracts with third party suppliers to carry out activities on their behalf. Signing longer contracts with these suppliers may reduce the annual cost of the contracts.
- A5.23 Licence periods of less than five years may significantly influence the commercial viability of radio broadcasters.
- A5.24 Licence periods greater than five years may give commercial radio stations a better chance of recovering their total expenditure during the licence period depending on the way their business is structured and planned.