



Regulation of community radio services

A statement on the procedure for considering changes to a station's key commitments, and other aspects of community radio regulation

Statement

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Section 1

Summary

Consultation

- 1.1 On 10 June 2008 Ofcom published a consultation on the procedure for considering changes to a community radio station's key commitments ("the Consultation"). The consultation is available at http://www.ofcom.org.uk/consult/condocs/regulation_cr/.
- 1.2 We received nine responses to the consultation most of which supported some or all of the proposed procedure, and a number of respondents offered additional suggestions. One respondent did not confirm whether they were content for their details to be made publicly available; therefore, we have treated it as a confidential response. None of the other responses were confidential.

Key commitments

- 1.3 Each community radio station has a set of 'key commitments' which forms part of its licence. The 'key commitments' summarise the core aims of each service and how it will meet the particular legislative requirements that apply to community radio.
- 1.4 The 'key commitments' document includes:
 - a description of the community to be served;
 - a summary of the character of service (a short description of the station's aims);
 - a description of the programme service;
 - social gain objectives (including how the station will satisfy the mandatory social gain requirements set out in the relevant legislation, and any other social gain objectives of the service);
 - access and participation arrangements; and
 - mechanisms to ensure accountability to the target community.

Ofcom's decision

- 1.5 Ofcom will implement the procedure proposed in the consultation, with the following changes:
 - Ofcom agrees with respondents that the decision on whether a proposed change is substantial or not should be made on a case-by-case basis.
 - If a proposed change is considered to be substantial, a consultation will be required. The final decision in such cases will be made by Ofcom's Radio Licensing Committee.

Process for considering requests to change key commitments

- 1.6 Community radio stations can submit a request for changes using the 'key commitments change request form' available on the Ofcom website and at annex 1 of this document.
- 1.7 On receipt of a change request, Ofcom will consider it against five statutory criteria (see paragraph 2.5) and under five further additional policy criteria (see paragraph 2.9).
- 1.8 The first criterion in the legislation requires Ofcom to consider whether or not the requested change is one that would "substantially alter the character of the service". Each assessment of whether a change is 'substantial' will be considered on a case-by-case basis.
- 1.9 If a proposed change is regarded as substantial, then a consultation will be conducted, and the change can be approved if it satisfies one of the remaining four statutory criteria. If a request is not considered to satisfy any of the statutory criteria, it will not be approved.
- 1.10 If a consultation on the proposed change is undertaken, Ofcom will publish a notice specifying the requestor's change request form, and invite comments on the proposals under the legislative criteria. The requesting community radio station will be required to publicise its request for a change (through, for example, regular on air announcements and prominent messages on its website) and Ofcom's consultation on this matter, including how to respond to the consultation. The consultation period will (normally) last for four weeks.
- 1.11 When the consultation has closed, a decision will be taken by Ofcom's Radio Licensing Committee with reference to the responses to the consultation, the statutory criteria, and our additional policy criteria. Decisions will be published on the community radio section of Ofcom's website, and the appropriate changes, if any, made to the licence.
- 1.12 If a consultation is conducted, the change can be approved only if it satisfies one of the remaining four statutory criteria. However, the Legislation gives Ofcom discretion on whether or not to accept a proposed change even if it satisfies one of the criteria.

Ensuring compliance with key commitments

- 1.13 This statement also explains Ofcom's mechanisms for ensuring that stations are delivering their key commitments. These are station annual reports, the investigation of complaints, and content sampling.
- 1.14 If, following a complaint, or content sampling, or as a result of information received as part of community radio stations' annual reports, Ofcom believes that a station may be failing to deliver the objectives set out in its key commitments, it will enact its key commitments compliance procedure.
- 1.15 This will involve Ofcom contacting the station to discuss the reasons for non-delivery and may require further correspondence setting out how the station can resolve the matter. In some circumstances, Ofcom may consider issuing a 'yellow card' to demonstrate the seriousness of the problem and which will only be lifted once matters have been put right. In some cases the application of a sanction (see paragraphs 4.23 - 4.25) may need to be considered.

Section 2

Background

- 2.1 Community radio services are licensed under the terms of three different pieces of legislation: the Community Radio Order 2004, the Communications Act 2003 and the Broadcasting Act 1990 (“the Legislation”). The Legislation sets out requirements for community radio, including that services are non-profit-distributing, are provided for a target community, deliver social gain objectives, invite access and participation in the service, and are accountable to the target community.
- 2.2 When a group applies for a community radio licence, it sets out its proposals for how it will satisfy these various requirements. The Legislation further requires that an applicant's proposals are secured in the licence, should one be granted, to ensure that its proposals are delivered. The way we do this is by summarising an applicant's proposals in a ‘key commitments’ document, which forms part of the licence. This is agreed with each licensee prior to the station commencing broadcasting.
- 2.3 The ‘key commitments’ document includes:
- a description of the community to be served;
 - a summary of the character of service (a short description of the station’s aims);
 - a description of the programme service;
 - social gain objectives (including how the station will satisfy the mandatory social gain requirements set out in the Legislation, and any other social gain objectives of the service);
 - access and participation arrangements; and
 - mechanisms to ensure accountability to the target community.
- 2.4 The Legislation allows licensees to request a change to their ‘key commitments’ and sets out criteria for considering changes to ‘key commitments’, but also gives Ofcom discretion to reject changes even if one of these criteria is satisfied.

Statutory criteria

- 2.5 The statutory criteria are set out in Section 106(1A) of the Broadcasting Act 1990 (modified by the Community Radio Order 2004), and are as follows:
- (a) that the departure would not substantially alter the character of the service;
 - (b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community;
 - (d) that, there is evidence that, amongst persons comprising that community, there is a significant demand for, or significant support for, the change that would result from the departure;

- (e) that the departure would not be prejudicial to the access by members of that community to the facilities used for the provision of the service and for training in the use of those facilities; or
 - (f) that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence.
- 2.6 Ofcom is not required to consult on a proposed change when we consider that it satisfies criterion (a) - i.e. that a proposed change would "not substantially alter the character of the service". The term 'character of the service' is not defined in the Legislation. We consider that it should include everything that is set out in each service's 'key commitments' section of its licence. For the avoidance of doubt, this goes beyond the sub-section in the key commitments document entitled 'character of service' to encompass all of the 'key commitments'.
- 2.7 The Consultation sought views on what may constitute a "substantial" change to a 'key commitments' document. It also sought views on whether, in order to provide practical flexibility for both Ofcom and any licensee wishing to make changes, decisions on whether a proposed change is considered 'substantial' or not should be taken on a case-by-case basis.
- 2.8 If a proposed change is regarded as substantial, then a consultation will be conducted, and the change can be approved if it satisfies one of the remaining four statutory criteria. However, the Legislation gives Ofcom discretion on whether or not to accept a proposed change even if it satisfies one of the criteria.
- 2.9 The Consultation put forward five proposed additional policy criteria, and the rationale behind them, that Ofcom believed were also important to take into account when considering such changes.

Additional Ofcom policy criteria

- 2.10 The five additional criteria are:
- **Whether the proposed change conflicts with the community radio 'characteristics of service' (see annex 2) set out in the Legislation.** Ofcom considers that such a conflict would run counter to the Legislation.
 - **The time elapsed since the licence commenced.** We proposed that a station should be operating under its agreed 'key commitments' for at least one year before we will consider a change to 'key commitments'.
 - **The reason for the change.** We said that it may be appropriate for us to take account of the kind of environment within which the station operates and that in the light of experience a station may need to adjust its commitments to better serve its target community.
 - **The extent of the impact of the change on the character of the service.** We said that a judgement will need to be made on the basis of the overall sound of the station, as well as whether the change is likely to affect the delivery of an appropriate service to the stated target community, and what effect the change will have on the delivery of off-air activity such as social gain objectives.

- **The avoidance of ‘format creep’.** We said that we would be alert to the possibility that a series of small changes could result in a substantial alteration, and that we would therefore take into account the effect of any proposed change in the context of previous changes.

2.11 The Consultation also set out Ofcom’s proposed process for considering requests for changes, and asked for comments on its effectiveness and appropriateness.

Section 3

Consultation responses

Introduction

3.1 The Consultation asked for responses to three questions (see below) regarding the proposed procedure for changes to key commitments.

3.2 There were nine responses to the Consultation, one which we have treated as confidential (the respondent did not confirm whether they were content for their details to be made public). The public respondents were: the Community Media Association (CMA), Gateway FM and D Lawrence Consulting, NR5 Project / Future Radio (NR5), Panjab Radio / Asian fx (Panjab Radio), R Perry (individual), RadioCentre, Radio Regen and Soundwork. These responses can be found on our website at www.ofcom.org.uk/consult/condocs/regulation_cr/

Q1 Do you agree that a proposed change is likely to be substantial if it would change the target community, and/or change the 'character of service' paragraph in the 'key commitments', and/or alternatively may need to be decided on a case-by-case basis?

Respondent comments

3.3 Respondents who answered question 1 were generally supportive of Ofcom's proposal, although a number offered additional comments.

3.4 The CMA, Panjab Radio and NR5 all said that decisions should be taken on a case-by-case basis.

3.5 The CMA said that it believed that there may be cases where a proposed change appears substantial but may not be in practice. It cited a potential scenario whereby a station's target community had itself changed over time, which would mean that "the station was still serving the community, albeit with different characteristics than was the case when the original application was accepted". However, the CMA said that under such a scenario Ofcom should ensure that there was clear evidence that this was the case.

3.6 NR5 said that a small alteration to the station's target community might have a limited impact upon the key commitments, if for example the target community was broadened to include new / developing communities within the station's coverage area. It cautioned against more substantial changes that could impact upon a station's distinctiveness and ability to deliver social gain. It was particularly concerned about weakening training, accessibility and accountability commitments.

3.7 Panjab Radio said that a change to the target community would completely change the aim of the station. It was concerned that increased competition would impact upon commercial services as they would have increased overheads "as they receive no government funding" and that Ofcom should take into account the impact of any changes upon other stations.

- 3.8 RadioCentre suggested that any measurable change to a community station's music and speech output policies would also substantially alter the character of the service and should therefore also be subject to scrutiny by Ofcom.
- 3.9 Radio Regen supported the CMA's submission and added that it thought that Ofcom must be satisfied that the reasons for the proposed change were rooted in the community and not, for example, just the station's management.
- 3.10 Soundwork said that whilst change could be a 'liberating process' it was important not to allow a loss of the ethos that guided community radio.

Ofcom response

- 3.11 In light of the comments received, Ofcom considers it appropriate to assess whether any potential change to key commitments is 'substantial' on a case by case basis.
- 3.12 The examples given in the Consultation - changes to the target community or character of service elements of the key commitments - were to illustrate those changes that might be considered substantial. However, Ofcom agrees with NR5 and the RadioCentre's comments that changes to training, accessibility and accountability (NR5) and music and speech (RadioCentre) could be substantial. Indeed changes to any part of the key commitments could be regarded as substantial, depending on the exact proposal. However, Ofcom does not agree that a 'measurable change' to music and speech output should automatically be considered substantial – as suggested by the RadioCentre - as this could refer to a very small change in output.
- 3.13 With regards to the point raised by Radio Regen, Ofcom agrees that it is important that any proposed changes have the ultimate purpose of serving the station's target community. Ofcom's additional policy criteria which will be used when considering such requests include consideration of the extent to which the changes would meet community radio 'characteristics of service' as defined by the Legislation (see annex 2) – any change that conflicted with such characteristics would not be permitted.
- 3.14 The potential impact of proposed changes on other stations is discussed below.

Q2 Do you agree with each of the five additional criteria that Ofcom proposes to apply to any requests for changes to 'key commitments'? If not, why not?

Respondent comments

- 3.15 As with the first question, respondents who answered the second question tended to support Ofcom's proposals, although a number offered additional comments.
- 3.16 Panjab Radio said that consulting with the community was important, and was concerned about the process outlined in the Consultation for approving changes without a consultation or following a shortened consultation procedure.
- 3.17 NR5 agreed that at least a year was appropriate before a station could request a change to its key commitments. It also suggested that, following any modification, further changes should not be permitted for at least another year.
- 3.18 RadioCentre argued that a further criterion should be added, that of the economic impact of the change on other local services, particularly small commercial radio

stations. The RadioCentre acknowledged that while Ofcom “is not legally obliged to consider this in the context of licence changes under section 106 of the 1990 Act, we believe there is a natural read across from 105(3).”

- 3.19 Radio Regen said that it was sceptical that communities change substantially enough in two to three years to justify a change on these grounds and suggested that Ofcom should ask stations requesting such a change why they had not been aware of the community changes at the time of their application. Radio Regen also thought that Ofcom should be particularly wary of changes that sought to reduce the level of speech output of a service, as in general much of a station’s social gain was delivered through speech output.

Ofcom response

- 3.20 Ofcom notes Radio Regen’s comments that a community is unlikely to change substantially over two to three years (which is the typical length of time between a licence application and the end of the first year of service). However, stations may request changes for a range of reasons, not all related to changes in the target community.
- 3.21 With respect to the potential economic impact on other local radio services, Ofcom recognises the RadioCentre’s and Panjab Radio’s concerns and notes the RadioCentre’s observation that assessment of such an impact is a duty at the point of licensing only - there is no equivalent legislative requirement when looking at changes to the licensed service.
- 3.22 Ofcom recognises the RadioCentre’s concerns but believes that there are other criteria which will help mitigate against, for example, the likelihood of Ofcom agreeing to a change to a licensed community radio service that would significantly impact economically on other stations.
- 3.23 The statutory criteria include consideration of whether such a change would narrow the range of programmes available locally. Furthermore, as noted above, Ofcom’s additional criteria include an assessment of the extent to which the changes would meet community radio ‘characteristics of service’ as defined by the Legislation. Any station changing its key commitments must ensure that it remains a community radio service with all the relevant social gain and other obligations that this entails - such as serving an underserved community or communities. We will also consider the reasons for the proposed change, and be wary of allowing a succession of changes that lead to ‘format creep’.
- 3.24 The potential for a waived or shortened consultation period is addressed below.

Q3 Do you have any further proposals for making the procedure more effective and/or appropriate, that you would like to bring to our attention?

Respondent comments

- 3.25 The CMA and NR5 felt that any consultation on proposed changes to key commitments should be distributed widely, in particular to members of the target community. The CMA suggested that there should be safeguards in place to protect against potentially vexatious responses to such consultations. The CMA also said that it was important that the final decision on whether or not to permit changes was taken by Ofcom’s Radio Licensing Committee as a matter of course.

- 3.26 NR5 said that there may be cases where proposed changes satisfied one of the statutory criteria, but in other respects were damaging to the communities concerned.
- 3.27 Panjab Radio acknowledged that change might be necessary but urged that any proposed changes were weighed against the station's original community radio application to judge how much difference there would be, and who would be affected. It also suggested that a member of the Ofcom team visit the requesting station to assess the need for, and the station's capacity for, change.
- 3.28 Rycharde Perry (private individual) said that many community radio stations did not provide proper access to those in wheelchairs or with limited mobility. He said that Ofcom should not grant licences to stations that were not prepared to abide by the Disability Discrimination Acts (1995 & 2005), and that Ofcom had erred in granting licences to those stations that did not provide access.
- 3.29 RadioCentre noted the importance of practicality in designing regulatory approaches. However, it said that differences between the two sectors (commercial and community), in particular the relative newness of community radio, meant that community radio regulation should remain "sufficiently granular".
- 3.30 Radio Regen said that it was important that the consultation with the wider community was not just left to the station requesting the changes, as the station may be failing to engage with key parts of its target community. It suggested contacting local voluntary sector umbrella groups as one means of seeking views, and also noted that local authorities may be approached for views but that political factors could colour responses.
- 3.31 Radio Regen expressed concern about the potential waiving of a consultation as set out in paragraph 3.15 of Ofcom's Consultation. It said that a station's interests were secondary to those of the community it was serving, and that waivers should take place only in exceptional circumstances.
- 3.32 Radio Regen said that Ofcom should do all it can to ensure that stations are not diluted or even 'hijacked' by people who do not have the communities' interest at heart; for example, protecting against 'back door commercialisation'. In Radio Regen's view, it is unlikely that there will be many legitimate cases where changes to key commitments can be justified.
- 3.33 Soundwork offered some comments on licence renewal at the end of the five year licence, suggesting that a process for such a renewal should involve local partners, service providers and supporters assessing the impact of the station. It added that the community radio sector was still developing and that key commitments "will always reflect the potential possibilities and will always be restricted by the limits of creative input, financial resource and community support".
- 3.34 One confidential respondent argued that there was too much regulation placed on community stations and, citing competition from online stations (some of whom are backed by large commercial organisations), stated that in their view all five of the statutory criteria should be removed.

Ofcom response

- 3.35 With respect to the concerns raised by respondents about a shortened or waived consultation period in the event that a delay would be likely to prejudicially affect the interests of the licensee, Ofcom notes that this is possible under the legislation. (However, stakeholders should note that this procedure has been rarely used in the past when considering changes to commercial stations' formats.)
- 3.36 Ofcom agrees that a consultation should be open to as many members of the community as possible and the Legislation stipulates that a notice of a consultation must be published in a manner as appears to Ofcom to be appropriate for bringing it to the attention of persons who, in Ofcom's opinion, are likely to be affected by the changes. The process we proposed requires stations to publicise the fact of a consultation within its community, and a station requesting changes might strengthen its argument by demonstrating the support of the community and local stakeholders. Requiring the station to publicise the consultation through, for example regular on air announcements and prominent messages on its website, places a greater but appropriate obligation on community stations when compared to commercial services which request changes to their formats. We believe that further regulatory action to seek stakeholder views would not be an appropriate use of resources.
- 3.37 Ofcom agrees that the decision on whether to agree to a change under any of the criteria b) to f) - i.e. one which has been determined to be substantial and thus the subject of a consultation - should be taken by Ofcom's Radio Licensing Committee¹.
- 3.38 Ofcom notes the concern raised by NR5 that there may be cases where proposed changes satisfy one of the statutory criteria but in other respect were damaging to the communities concerned. However, the Legislation gives Ofcom discretion on whether or not to accept a proposed change even if it satisfies one of the criteria.
- 3.39 With respect to the suggestion that Ofcom should visit stations which are making such requests, Ofcom may decide to visit stations on occasion. However, we do not believe it will be necessary in the majority of instances.
- 3.40 With regard to the question of disabled access to community stations, we note that a number of stations have been licensed which specifically seek to serve the disabled community, and many more make provision for access. Ofcom welcomes this, and further notes that during the licensing process we do take account of the provision made for access to the service by members of the target community, as is required by the Legislation. Furthermore, Ofcom encourages its radio licensees to promote good practice with respect to diversity and equal opportunity, including with regards to accessibility. However, it is important to note that Ofcom is not empowered to enforce disability legislation, this power lies with the Equality and Human Rights Commission.
- 3.41 We note Soundwork's view that key commitments should be considered as 'potential possibilities' subject to a variety of constraints. Although we recognise the challenging environment within which community stations operate, we are clear that these are commitments and not aspirations. One of the purposes of the change process is to allow a station to make reasonable changes to these commitments, so long as it is in the interest of the target community.

¹ The Radio Licensing Committee has delegated authority from the Ofcom Board to discharge Ofcom's functions in relation to radio (sound) broadcasting licensing.

- 3.42 With regards to Soundwork's proposals on licence renewal, it is important to note that, at present, the Legislation does not set out a process for licence renewal. However, we expect that DCMS will consult on a number of changes to the Legislation, and that this will include a process for community radio licence renewal.
- 3.43 Finally, in response to the suggestion that the five statutory criteria should be removed in light of the competition faced by community stations, the five statutory criteria are a legislative requirement which Ofcom is legally obliged to consider them.

Section 4

Decision and next steps

The process for considering requests for changes to key commitments

- 4.1 The process set out below comes into effect on the day of the publication of this statement (23 September 2008).
- 4.2 A request for a change(s) to 'key commitments' should be submitted on a 'key commitments change request form'. A copy of the request form is in annex 1 of this document and is available on Ofcom's website http://www.ofcom.org.uk/radio/ifi/rbl/commun_radio/. Community radio stations should download the form, complete it and submit it for consideration to Ofcom. In addition, the form will be available by email or hard copy from the team on request from Ofcom's Radio Policy and Broadcast Licensing team (via email: community.radio@ofcom.org.uk, telephone 020 7981 3886 or letter: Radio Policy and Broadcast Licensing team, 5th floor, Ofcom, Riverside House, 2a Southwark Bridge Road, London, SE1 9HA).
- 4.3 On receipt of a change request, Ofcom will consider it against the statutory criteria (paragraph 2.5) and the additional criteria (paragraph 2.9). The first consideration is whether a proposed change would substantially alter the character of service of the station. If Ofcom considers that this is the case, then the proposed change will need to be considered under the second, third, fourth or fifth statutory criteria (in paragraph 2.5) and a consultation will need to be carried out. At that point, Ofcom will seek confirmation from the applicant as to whether it wishes to proceed with the request (and, if so, whether it wishes to amend or replace its submission in light of the necessity to make it public).
- 4.4 If a consultation on the proposed change is conducted, Ofcom will publish the requestor's change request form, and invite comments on the proposals under the legislative criteria. Ofcom is not required to publish any confidential information. The requesting community radio station will be required to publicise its request for a change, and Ofcom's consultation on this matter, including how to respond to the consultation. The consultation period will (normally) last for four weeks.
- 4.5 It should be noted that Ofcom may approve a change under any of criteria (b), (d), (e) and (f) without consultation, or after a consultation of fewer than 28 days, if we consider that to hold a consultation at all, or for 28 days or more, would result in a delay that would be likely to prejudicially affect the interests of the licensee.
- 4.6 When the consultation has closed, a decision will be taken by Ofcom's Radio Licensing Committee with reference to the responses to the consultation, the statutory criteria and its additional policy criteria. If a request is not considered to satisfy any of the statutory criteria, it cannot be approved. If a proposed change is regarded as substantial, then a consultation will be conducted, and the change can be approved if it satisfies one of the remaining four statutory criteria. However, the Legislation gives Ofcom discretion on whether or not to accept a proposed change even if it satisfies one of the criteria.
- 4.7 The licensee will be informed of the outcome and decisions will then be published on the community radio section of Ofcom's website, and the appropriate changes, if any, made to the licence.

Ensuring compliance with key commitments

- 4.8 Ofcom has a number of mechanisms for ensuring that stations are delivering their key commitments. These are station annual reports, the investigation of complaints and content sampling. These mechanisms are detailed below, followed by an overview of the compliance process that we will follow if a station is not meeting its objectives.

Annual reports

- 4.9 Community radio licensees are required to submit an annual report on progress and delivery against their key commitments. We have a template for the annual report which licensees are required to complete. (There is a separate pro forma for financial information, see below.) In addition, we require licensees to keep information on file for examination, should we need to see it. This relates to the delivery of the key commitments (for example training records) as well as financial records. This helps ensure that a station can justify its activities in case of complaint by ensuring that it holds a complete record of the work it has undertaken towards the delivery of its licence obligations. Any station wishing to account for the time of volunteers, should refer to Ofcom's guidelines on volunteer input available at www.ofcom.org.uk/radio/ifi/rbl/commun_radio/.
- 4.10 There are funding limits in community radio legislation which are reflected in each licence. We need to check that they are being adhered to on an annual basis. They are as follows:
- A maximum of 50% of annual income comes from the inclusion in the service of remunerated advertisements and sponsorship; or
 - A lesser proportion than 50% annual income comes from the inclusion in the service of remunerated advertisements and sponsorship; or
 - A prohibition on the inclusion of any remunerated advertisements and sponsorship.
- 4.11 Ofcom will also check to ensure that licensees have not received more than 50% of their income from any one source.
- 4.12 Each station is required to complete and submit a pro forma financial report each year, so that we can judge whether it has stayed within the funding limits set by the legislation. The report includes information such as major sources of income and expenditure. A failure to adhere to the funding limits will be a breach of a licence condition.

Complaints

- 4.13 Complaints about standards in programme output and fairness and privacy issues are dealt with in the same manner as for other broadcasters. In the first instance, complainants can contact the station concerned directly. If the complainant is not satisfied with the response or, alternatively, they wish to raise the matter with Ofcom directly, a complaint may be submitted via our website

(www.ofcom.org.uk/complain/progs/) or by letter, phone, or email, about any programme that has been broadcast (see contact details above).

- 4.14 Any complaint about a station's failure to deliver its key commitments can also be made directly to the radio station concerned (contact details are on our website at www.ofcom.org.uk/static/radiolicensing/Community/community-main.html). Alternatively a complaint may be made to Ofcom's Radio Policy and Broadcast Licensing team (see contact details above). If, as a result, we find that there is a problem, we will pursue the matter with the station concerned (see compliance procedure outlined below).
- 4.15 All community radio licensees are required to adhere to the requirements of the Broadcasting Code (www.ofcom.org.uk/tv/ifi/codes/bcode/) and the Advertising Standards Authority's Code (<http://www.asa.org.uk/asa/>).

Content sampling

- 4.16 In order to check that community radio stations are broadcasting according to the requirements of their key commitments, Ofcom may, from time to time, listen to a station's output. This is called 'content sampling'. The sampling of a particular station may be prompted by a complaint concerning key commitments, or may be entirely routine (a 'spot check'). In the event that we decide to conduct content sampling we will contact the radio station concerned to request recordings of output. After the exercise has been completed we will publish a content sampling report on our website.

Compliance procedure

- 4.17 If Ofcom believes that a station may be failing to deliver the objectives set out in its key commitments – whether as a result of a complaint, content sampling, the annual reporting process or another reason - it will enact its key commitments compliance procedure.
- We will discuss our concerns with the station giving a clear description of what we consider has not been delivered;
 - We will ask the station how it intends to rectify the situation and then set out an agreed action plan to bring the station in line with its key commitments;
 - We will tell the station the timetable for this action.
- 4.18 We will then:
- Follow up with a station as necessary, and according to the timetable we have set, requiring evidence that the situation has been rectified.

The use of community radio 'yellow card' warnings

- 4.19 Some problems may require more formal action and this may mean the issuing of a community radio 'yellow card', which will only be lifted when matters have been put right.
- 4.20 If we consider that a 'yellow card' is appropriate, we will use this as a mechanism for indicating that a station is not performing within its promised key commitments, and

that we regard the issue as a serious one. This allows a licensee to understand the problems that have been identified and seek clarification if necessary. Ofcom will use yellow cards in the regulation of any key commitment issue, not just broadcasting content.

- 4.21 A yellow card is not a formal licence sanction (see below), but a useful way of highlighting a problem, especially one of considerable concern and requiring action to rectify it. The review of a yellow card is usually decided on a case-by-case basis (some problems may need more urgent action than others). If a problem is sufficiently serious we may decide not to issue a yellow card, but instead to consider applying a sanction. The process for sanctions is set out below.
- 4.22 When a yellow card is issued, information about it will be published on our website. This will include:
- the station concerned;
 - the reason for the 'yellow card';
 - the date it was issued;
 - what action is required; and
 - when it will be reviewed

Sanctions

- 4.23 On rare occasions, if the problem is not rectified within a time limit specified, or is sufficiently serious in its own right, the station concerned may be considered for a sanction.
- 4.24 The broadcasting legislation specifies what sanctions Ofcom may consider applying, these include:
- directing a licensee to broadcast a statement of findings;
 - to impose financial penalties;
 - to shorten the licence period;
 - suspend the licence; or
 - to revoke the licence.
- 4.25 If such action is considered, a station will receive information about the matter in writing, and be given the opportunity to make representations to Ofcom. Even if a sanction is not applied, it is possible that the problem would result in a licence breach being recorded. Licence breaches are placed on a station's file, and will be taken into account should the station concerned apply for an extension to its current Broadcasting Act licence, or if another Broadcasting Act licence is applied for by the licence holder in future.

Annex 1

Key commitments change request form

Community radio station name:

Name of person proposing change:

Outline key commitment change(s) proposals:

The operator of a community radio licence may apply to Ofcom to have the station's key commitments amended. Any application should be made using the layout shown on this form, and should be in accordance with Ofcom's published procedures for key commitments changes [to be agreed and then made available on our website]. Please take as much space as you wish in completing this form (expanding the boxes, or appending separate information, as necessary)

Under section 106(1A) of the Broadcasting Act 1990 (as amended* and modified**), Ofcom may consent to the change only if it is satisfied that *at least one of the following five criteria is satisfied*:

- (a) *that the departure would not substantially alter the character of the service;*
- (b) *that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community;*
- (c) [omitted for community radio licences];
- (d) *that there is evidence that, amongst persons comprising that community, there is a significant demand for, or significant support for, the change that would result from the departure.*
- (e) *that the departure would not be prejudicial to the access by members of that community to the facilities used for the provision of the service and for training in the use of those facilities; or*
- (f) *that the departure would not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence.*

Only one of these five criteria needs be satisfied in order for Ofcom to consent to the proposed change. However, even if Ofcom is of the opinion that the proposed change satisfies one or more of the statutory criteria, there may be reasons (depending on the particular circumstances of the case) why Ofcom may not consent to the proposed change.

In addition, applicants should note that, under section 106ZA of the same Act (as amended*), a proposed change that *does not* satisfy the first of these criteria (i.e. a change that Ofcom considers *would or could* substantially alter the character of the service) must, if it is to be considered further under any of the other four criteria, be consulted upon. #.

In the event that Ofcom receives a request for a key commitments change and considers that criterion (a) is *not* satisfied, it will seek confirmation from the applicant as to whether it wishes to proceed with the request (and, if so, whether it wishes to amend or replace its submission in light of the necessity to make it public).

Please present your submission in the following manner:

Section 106(a) relevance...

Section 106 (b), (d), (e) and (f) relevance...

Any additional information and/or evidence in support of proposed change(s).

Notes

* As amended by sections 312 and 313 of the Communications Act 2003

** As modified by The Community Radio Order 2004

Ofcom may approve a change under any of criteria (b), (d), (e) and (f) without consultation, or after a consultation of less than 28 days, if Ofcom considers that to hold a consultation at all, or for 28 days or more, would result in a delay that would be likely to prejudice the interests of the licensee. Ofcom may also remove for the purposes of consultation any confidential information submitted by the licensee. Section 106ZA requires a consultation for criteria (b) and (d). Ofcom considers it appropriate to apply this consultation requirement to sections (e) and (f) in addition for community radio.

Annex 2

Characteristics of community radio services

A definition of community radio

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

(1) It is a characteristic of community radio services that they are local services provided primarily -

*(a) for the good of members of the public, or of particular communities, and
(b) in order to deliver social gain,*

rather than primarily for commercial reasons or for the financial or other material gain of the individuals involved in providing the service.

(2) It is a characteristic of every community radio service that it is intended primarily to serve one or more communities (whether or not it also serves other members of the public).

(3) It is a characteristic of every community radio service that the person providing the service -

*(a) does not do so in order to make a financial profit by so doing, and
(b) uses any profit that is produced in the provision of the service wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve.*

(4) It is a characteristic of every community radio service that members of the community it is intended to serve are given opportunities to participate in the operation and management of the service.

(5) It is a characteristic of every community radio service that, in respect of the provision of that service, the person providing the service makes himself accountable to the community that the service is intended to serve.

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

"community" means -

*(a) the persons who live or work or undergo education or training in a particular area or locality, or
(b) persons who (whether or not they fall within paragraph (a)) have one or more interests or characteristics in common;*

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

In relation to a community radio service, "social gain" means the achievement, in respect of individuals or groups of individuals in the community that the service is intended to serve, or in respect of other members of the public, of the following objectives -

- (a) the provision of sound broadcasting services to individuals who are otherwise underserved by such services,*
- (b) the facilitation of discussion and the expression of opinion,*
- (c) the provision (whether by means of programmes included in the service or otherwise) of education or training to individuals not employed by the person providing the service, and*
- (d) the better understanding of the particular community and the strengthening of links within it,*

and may also include the achievement of other objectives of a social nature and, in particular, those mentioned [below].

Those objectives are -

- (a) the delivery of services provided by local authorities and other services of a social nature and the increasing, and wider dissemination, of knowledge about those services and about local amenities;*
- (b) the promotion of economic development and of social enterprises;*
- (c) the promotion of employment;*
- (d) the provision of opportunities for the gaining of work experience;*
- (e) the promotion of social inclusion;*
- (f) the promotion of cultural and linguistic diversity;*
- (g) the promotion of civic participation and volunteering.*