



# Regulation of community radio services

A consultation on the procedure for considering changes to a station's key commitments

## Consultation

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## Section 1

# Summary

- 1.1 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 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.
- 1.2 When an applicant 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.
- 1.3 The community radio legislation allows licensees to request a change to their 'key commitments'. The legislation says that Ofcom may agree to a change to the character of the licensed service only if we are content that any one of five criteria is satisfied.
- 1.4 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". We are seeking views on what may constitute a "substantial" change to a 'key commitments' document.
- 1.5 If a proposed change is regarded as substantial, then a consultation will be required, and the change can be approved only if it satisfies one of the remaining four legislative criteria.
- 1.6 However, it is important to note that the legislation does not say that Ofcom must approve a change if it satisfies one of the statutory criteria. In other words, Ofcom could still reject a proposed change even if it satisfies the statutory requirements.
- 1.7 Therefore, this document sets out for consultation five additional criteria which we propose to take into account when considering a request for a change to a station's 'key commitments'. These criteria would be applied if a request is considered to satisfy any of the statutory criteria.
- 1.8 If a request is not considered to satisfy any of the statutory criteria, it cannot be approved.
- 1.9 This document also sets out, for consultation, a proposed process for considering requests from licensees for changes to their 'key commitments'.
- 1.10 The new procedure would become effective from the date of publication of Ofcom's statement on this issue. Ofcom aims to publish a statement in the autumn.

## Section 2

# Background

- 2.1 Community radio services are licensed under the terms of the Community Radio Order 2004<sup>1</sup> (the Order) which modifies some sections of the Broadcasting Act 1990 (the Broadcasting Act) as amended by the Communications Act 2003 (together "the Legislation"). The Order sets out a wide range of requirements which broadcasters must comply with in order to be awarded and subsequently to retain a community radio licence.
- 2.2 At the heart of the Order are the 'characteristics of community radio services' which define the nature of community radio, as well as various more detailed specific requirements which Ofcom must take into account when assessing an application for a community radio licence.
- 2.3 The specific characteristics of community radio service imposed upon community radio stations by Article 3 of the Order require that such services are operated:
- for the good of the public;
  - to deliver social gain (community benefit);
  - to serve specific communities;
  - to operate on a non-profit-distributing basis;
  - to provide operational and managerial opportunities for members of the target community (or communities); and
  - whereby the person providing the service is accountable to the community concerned.
- 2.4 The term 'social gain' is further defined by the Legislation, and includes four mandatory social gain objectives, as well as allowing services to define further social gain objectives themselves. The mandatory requirements are:
- a service for underserved groups;
  - the facilitation of discussion and the expression of opinion;
  - the provision of education or training (to non-employees); and
  - facilitating the better understanding of the particular community and the strengthening of links within it.
- 2.5 Ofcom first invited applications for community radio licences from across the UK in September 2004. The first new station launched just over a year later in November 2005. Since then, at the time of writing (June 2008), Ofcom has awarded 177 community radio licences, and of these over 100 stations have commenced broadcasting.
- 2.6 The Legislation requires Ofcom to include in each community radio licence such conditions as are appropriate for securing that the character of service, as proposed in the application, is maintained. As a result each station has specific 'key commitments' which form part of the licence. They are based on the promises made in the application, and agreed with each station before it commences broadcasting (a template document is included at annex 6). The 'key commitments' is the equivalent of the 'Format' included in every commercial radio licence. The 'Format'

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<sup>1</sup> SI 2004 No. 1944

outlines what the essential ethos of the commercial radio service should be (the type of output, and/or the audience at which it is aimed), and details any specific expectations of that service (such as how much of the output should be produced and presented from within the area being served; what specific type(s) of music should be played; how much speech should be broadcast). Commercial radio services are not expected to adhere to such a wide range of requirements as community radio services, and as a result their 'Formats' relate primarily to their broadcast output (i.e. what the listener hears) rather than off-air activities that they may undertake.

2.7 The 'key commitments' include:

- 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 four mandatory social gain requirements set out under paragraph 2.4 above, and any other social gain objectives of the service);
- access and participation arrangements; and
- mechanisms to ensure accountability to the target community.

2.8 The Legislation 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. This document sets out proposals on the considerations which might lead Ofcom to reject a proposed change which satisfies the statutory requirements, and also on the process to be followed when considering requests for changes to 'key commitments'. These proposals are designed to be as consistent with the regime for considering requests for changes to commercial radio station Formats<sup>2</sup> as is reasonably practicable, bearing in mind the differing statutory frameworks applying to the two types of radio service.

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<sup>2</sup> See [http://www.ofcom.org.uk/consult/condocs/radio\\_reviewp2/statement/](http://www.ofcom.org.uk/consult/condocs/radio_reviewp2/statement/)

## Section 3

# Proposed procedure

## Statutory criteria

- 3.1 The Legislation allows for changes to 'key commitments' to be considered. The statutory criteria are set out in Section 106(1A) of the Broadcasting Act 1990, and are reproduced in Annex 8 of this document. The statute says that Ofcom may consent to a departure from the character of the licensed service if, and only if, we are content that one of the following 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;
  - (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.
- 3.2 The term 'character of the licensed 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'.
- 3.3 The Legislation also requires that before deciding whether to agree to a change under any of the criteria (b) to (f) listed above, we must consult on the proposed change. In other words, the only circumstances under which we are not required to consult is when we consider that a proposed change satisfies criterion (a).
- 3.4 In practical terms, this means that the first decision that needs to be made is whether a proposed change would "substantially alter the character of the service" (criterion (a) above). It is difficult to provide exact definitions of 'substantial' in this context, but as a guide the simplest tests for a substantial change would be:
- if the proposed change impacted on the paragraph in the 'key commitments' summarising what the station's aims are, or;
  - if the description of the target community was to change.

These would undoubtedly signal a fundamental change, but they should not be the only types of change that could be regarded as substantial.

- 3.5 We consider that there needs to be practical flexibility for both Ofcom and any licensee wishing to make changes so that individual station characteristics can be fully explored. This would be made more difficult if the interpretation of 'substantial'

were to be made more rigid. Therefore a decision on whether a proposed change is considered 'substantial' or not needs to be taken on a case-by-case basis.

**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?*

- 3.6 If the proposed change is regarded as substantial, then a consultation will be required, and the change would need to be considered under one of the remaining four legislative criteria. Ofcom can only agree a substantial change if one of these four remaining criteria is met, and only one of the criteria needs to be satisfied. Under these circumstances however, the Legislation gives Ofcom discretion on whether or not to accept a proposed change.
- 3.7 The second statutory criterion, (b), refers to whether or not a change would narrow the range of programmes available by way of relevant independent radio services to persons comprising the relevant community. 'Relevant independent radio services' refers to any local analogue commercial or community radio service with which the community radio station in question overlaps. We will look at the measured coverage area (MCA) of a station (not the total survey area (TSA)) when determining overlaps<sup>3</sup>. 'Relevant community' refers to the target community identified in a community station's 'key commitments'.
- 3.8 The third criterion, (d), refers to demand and/or support for the proposed changes from the community. We propose that should we decide that a proposed change should be consulted on, and a consultation is considered under this criterion, the community radio operator requesting a change to its 'key commitments' should be required to make its target community aware of its proposals via on-air mentions, its website or other appropriate means. Members of the community should be encouraged to communicate their views to the station and/or Ofcom.
- 3.9 The fourth criterion, (e), requires that a change 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. A station's commitment to both access and training are set out in its 'key commitments' and proposed changes would need to be considered against each individual station's promises. Therefore different judgements would apply on a case-by-case basis.
- 3.10 The fifth criterion, (f), says that the departure should not be prejudicial to the delivery of social gain resulting from the provision of the service provided under that licence. Each station's social gain objectives are set out in its 'key commitments' and each station's commitments will be different from other community services, so individual judgments will need to be made.

### **Additional criteria when considering changes**

- 3.11 Ofcom may consider any request from a licensed community radio station for changes to its 'key commitments'. It is important to note that the Legislation leaves to Ofcom's judgement the decision about whether to permit a change, even if one of

<sup>3</sup> Maps of commercial radio station MCAs are on Ofcom's website at [www.ofcom.org.uk/static/radiolicensing/mcamaps/MCAs.htm](http://www.ofcom.org.uk/static/radiolicensing/mcamaps/MCAs.htm). Maps of community radio station MCAs are on the website at [www.ofcom.org.uk/static/radiolicensing/Community/community-main.html](http://www.ofcom.org.uk/static/radiolicensing/Community/community-main.html).

the statutory criteria set out in 3.1 above is satisfied. Ofcom proposes to take into account the following additional criteria when considering whether a request should be rejected even if one of the statutory criteria is satisfied:

- **Community radio ‘characteristics of service’.** We will not be willing to agree to a proposed change if it conflicts with the community radio characteristics of service, which define the core ethos of community radio stations. These come from the Order, are summarised in paragraph 2.3 above, and are set out in full in annex 7 of this consultation. The ‘key commitments’ reflect these requirements, and a change which would remove the delivery of one of the characteristics would, in our view, run counter to the Legislation.
- **The time elapsed since the licence commenced.** We propose that a station should be operating under its agreed ‘key commitments’ for at least one year before Ofcom will consider a change to ‘key commitments’. Community radio licences are granted for five years, and on the basis of promises and objectives set out in the licence application. The ‘key commitments’ are drafted from the application and agreed with the licensee prior to broadcast. We propose that it is reasonable that a community radio station should operate under this agreement for one year before we will consider a request for a change. Our policy with regard to commercial radio Format change requests is that these will not normally be considered in the first two years after a station has launched. However, community radio ‘key commitments’ are more detailed than commercial radio Formats, because of the broader range of legislative requirements (e.g. on social gain) and we believe that some of these small stations may need more flexibility to request changes to these detailed documents, for example in the light of operational experience. Our proposal also reflects that community services have a shorter licence term than commercial stations. In addition, because applications for community radio are invited in a different way from commercial radio, licences are not generally awarded to a group that has applied in direct competition with another applicant, nor on the basis of commercial considerations and the attractiveness in commercial terms of a particular ‘format’.
- **The reason for the change.** It may be appropriate for us to take account of the kind of environment in which a community radio station operates. A community station will have defined its target community in its ‘key commitments’; in the light of experience a station may need to adjust its commitments to better serve that community.
- **The extent of the impact of the change on the character of the service.** A judgment 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). Making this assessment may require the station’s content or other proposed changes to be evaluated in detail in the context of the whole ‘key commitments’ document.
- **The avoidance of ‘format creep’.** Ofcom will be alert to the possibility that a series of small changes to ‘key commitments’ could in aggregate amount to a substantial alteration to the character of a service. Consequently we propose to take into account the effect of a proposed change in the context of any previous changes.

**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?*

## Process for considering requests for changes

- 3.12 Any request for a change(s) to 'key commitments' should be submitted on a 'key commitments change request form'. A copy of the draft request form is in annex 5 of this document. (In addition a copy of the template 'key commitments' document is included at annex 6, for information). Following the outcome of this consultation, an agreed process for considering proposed changes will be adopted, and a request form will be put on the community radio section of our website. Community radio stations will be able to 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 ([communityradio@ofcom.org.uk](mailto:communityradio@ofcom.org.uk)).
- 3.13 On receipt of a change request, Ofcom will first consider it against the legislative criteria (paragraph 3.1) and then, if necessary, under the additional criteria. If a change would substantially alter the character of service of the station, the change will need to be considered under the second, third, fourth or fifth statutory criteria (in paragraph 3.1) and a consultation will be carried out<sup>4</sup>. 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).
- 3.14 If a consultation on the proposed change is required, Ofcom will publish the requestor's change request form, and invite comments on the proposals under the legislative criteria. The consultation period will (normally) last for four weeks, and 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.
- 3.15 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 prejudice the interests of the licensee. (We may also remove for the purposes of consultation any confidential information submitted by the licensee).
- 3.16 When the consultation has closed, a decision will be taken by Ofcom with reference to the responses to the consultation, and its proposed policy criteria, as well as the legislative criteria. Decisions will be published on the community radio section of Ofcom's website, and the appropriate changes made to the licence documents.
- 3.17 The process will be administered by Ofcom's Broadcast Licensing team. Decisions may be made within the team or alternatively referred to Ofcom's Radio Licensing Committee (RLC) for decision.

<sup>4</sup> Section 106ZA requires a consultation for criteria (b) and (d). Ofcom considers it appropriate in the interests of due process and best regulatory practice to apply this consultation requirement to sections (e) and (f) in addition for community radio.

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?*

## 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 Monday 21 July 2008**
- A1.2 Ofcom strongly prefers to receive responses using the online web form at [http://www.ofcom.org.uk/consult/condocs/regulation\\_cr/](http://www.ofcom.org.uk/consult/condocs/regulation_cr/), 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 <mailto:communityradio@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.
- Consultation on community radio content regulation  
Fifth floor  
Radio Team, Content & 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 Susan Williams on 020 7783 4319.

## 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](http://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 [www.ofcom.org.uk/about/accoun/disclaimer/](http://www.ofcom.org.uk/about/accoun/disclaimer/)

### Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in the autumn.
- 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: [www.ofcom.org.uk/static/subscribe/select\\_list.htm](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](mailto: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](mailto: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](http://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/](http://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

### Sub heading

A4.1 We would welcome comments on the proposed procedure for considering changes to a community radio station's 'key commitments' as set out in this document. We would welcome in particular, responses to the following questions:

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?*

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?*

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?*

## Annex 5

## Draft 'key commitments request form'

## 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 6

## Key commitments template

## Community radio licence: key commitments

Licence outline: [licence no.]

<b>Station name</b>	
<b>Community to be served</b>	<b>[Description of target community]</b>
<b>Licence area</b>	<b>[Location] (up to a 5km radius from the transmission site)</b>
<b>Frequency</b>	

**Character of service**

[Short description/mission statement.]

**Programming**

[Paragraph summarising programming aims, if necessary]

- Output will typically comprise XX% music and XX% speech ('speech' excludes advertising, programme/promotional trails and sponsor credits). [Ratios may need qualifying for daytime and outside daytime.]
- Music output will comprise [music: description of styles]
- Speech output will comprise/include [Speech output: summary of main elements]
- [Reference to output in different languages, if appropriate]
- The service will typically be live for at least XX hours per day. (Live programming may include pre-recorded inserts, if applicable.) The majority of the output will be locally produced.

**Social gain objectives**

*Community Radio Order 2004: "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."*

*"(a) the provision of sound broadcasting services to individuals who are otherwise underserved"*

- [Detail drawn from the application.]

*“(b) the facilitation of discussion and the expression of opinion”*

- [Detail drawn from application.]

*“(c) the provision (whether by means of programmes included in the service or otherwise) or education or training to individuals not employed by the person providing the service”*

- [Detail drawn from the application.]

*“(d) the better understanding of the particular community and the strengthening of the links within it”*

- [Detail drawn from the application.]

Additional social gain objectives:

- [Detail drawn from the application.]

### **Access and participation**

*Community Radio Order 2004: “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.”*

- [Detail drawn from the application.]

### **Accountability to the target community**

*Community Radio Order 2004: “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.”*

- [Detail drawn from the application to include reference to advisory boards/listener panels etc, AGM and complaints procedure.]

*\*All material in italics is direct quotations from the Community Radio Order 2004*

[Date]

## Annex 7

# Characteristics of community radio services

## A definition of community radio

A7.1 The Community Radio Order 2004 sets out five 'characteristics of community radio services'. These are summarised in paragraph 2.3, and 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.*

A7.2 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.*

## Annex 8

## Legal framework

## Requirements as to character and coverage of services

- A8.1 For reference purposes we reproduce below the relevant parts of section 106 of the Broadcasting Act 1990, as amended by the Communications Act 2003, and modified by the Community Radio Order 2004, which refer to changes to a community radio licence.
- (1) *A community radio shall include such conditions as appear to OFCOM to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force.*
- (1A) *Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are 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.*
- (1B) *The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a community radio licence include, in particular, the selection of spoken material and music in programmes included in the service.*
- (1C) *Without prejudice to the generality of subsection (1), a community radio licence shall include such conditions as appear to OFCOM to be appropriate for securing that the holder of the licence does not enter into, or remain subject to, any arrangement if an effect or that arrangement is to allow another holder of a Broadcasting Act licence or the BBC or the Welsh Authority to exercise an undue influence over the nature and content of the programmes included in the service provided under that licence.*
- (1D) *In subsection (1C), “arrangement” includes any agreement or arrangement with one or more other persons, whether or not it is, or is intended to be, legally enforceable.*
- (2) *Without prejudice to the generality of the provisions in subsections (1) to (1D), a community radio licence shall include such conditions as OFCOM consider*

*are appropriate to ensure that the licence holder provides the service described in the application for that licence.*

- (3) ...
- (4) *Subject to subsection (5), OFCOM may, if they think fit, authorise the holder of a community radio licence, by means of a variation of his licence to that effect, to provide the licensed service for any additional area or locality adjoining the area or locality in which that service has previously been licensed to be provided.*
- (5) *OFCOM shall only exercise the power conferred on them by subsection (4) if it appears to them –*
  - a. that to do so would not result in a significant increase of the area or locality in which the service in question is licensed to be provided; or*
  - b. that the increase that would result is justifiable in the exceptional circumstances of the case.*
- (6) *As soon as practicable after OFCOM have exercised that power in relation to any service, they shall publish, in such manner as they consider appropriate, a notice –*
  - a. stating that they have exercised that power in relation to that service; and*
  - b. giving details of the additional area or locality in which that service is licensed to be provided.*
- (7) *In this section “relevant independent radio services” means the following services so far as they are services falling to be regulated under section 245 of the Communications Act 2003 –*
  - a. sound broadcasting services;*
  - b. radio licensable content services;*
  - c. additional services;**but, in relation to a departure from the character of a service provided under a community radio licence, does not include a service that is provided otherwise than wholly or mainly for reception by persons comprising the relevant community in question.*