



# Radio – Preparing for the Future

## Appendix E: Impact assessments

October 2005

# E1. Regulation of Technical Quality

## Introduction

Ofcom has statutory duties in relation to the technical quality of broadcasts. These are:

- CA03 Sect.3(2)(c): to secure the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are of high quality;
- BA96 Sect.54(1)(g), to include appropriate conditions for securing that signals carrying radio multiplexes (including their 'payload' of sound channels) should attain high standards of technical quality.

At the moment, Ofcom sets minimum bit-rates within a Technical Code. Ofcom is considering whether these should change, in the light of technological progress made since the present provisions were established.

It is only the regulation of sound quality which is affected by the proposals set out in this document. Provisions relating to coverage of services, including robustness of reception, are unchanged.

## Policy Options

- **No change.** Leave the current rules as they are, based on a minimum capacity (bit-rate) for each sound service;
- **Reduce the allowable minimum bit-rate.** Retain the current regulatory approach, but reduce the allowable minimum capacity;
- **Establish a system of co-regulation, based on outputs.** Replace the current approach with a co-regulatory system in which licensees are required to establish and apply appropriate criteria and practices for securing quality, backed up by Ofcom; and
- **Apply external regulation to all relevant factors which determine quality.** Replace the current approach with a comprehensive set of detailed regulatory requirements in relation to the generation, handling (including storage and retrieval) and coding of audio broadcast on digital radio.

## Option Evaluation

### *No change*

Technological progress has enabled new coders to deliver better sound quality with the same bit-rate, or to achieve the same quality with a reduced bit-rate, which in turn would enable more services to be carried on a digital multiplex.

It is probable that retaining exactly the current provisions (requiring at least minimum bit-rates) would disincentivise investment in new, better, coders, and would therefore not secure Ofcom's statutory duty to have regard where relevant to the desirability of

encouraging investment and innovation in relevant markets (section 3(4)(d) Communications Act 2003).

*Reduce the allowable minimum bit-rate*

This option would enable investment in new coders to yield benefits of the investor's choosing (more services, or better quality, or even both). However, in other cases there would be no regulatory barrier to prevent the use of lower bit-rates without improving coding. This would increase the possibility of inadequate quality being delivered within the allowable conditions and with the assumed endorsement of the regulator. While there are still relatively few receivers, feedback from listeners may be less likely to have an influence on broadcasters' decisions on quality of service. Although the industry as a whole is nevertheless likely to maintain standards for commercial reasons, we consider that this option could be an ineffective discharge of a statutory responsibility.

Bit-rate is just one of the factors affecting quality, and despite the advantage of simplicity, we consider that regulating this one input factor alone is not the most effective way to regulate quality.

*Establish a system of co-regulation, based on outputs*

This would be likely to facilitate and encourage investment, taking advantage of the change in regulations. Developments in coders tested to date would allow about a 10% effective increase in capacity, which equates to a benefit of up to around £4-5 million/year based on access revenues alone. Alternatively, this would allow an improvement in audio quality at the same level of capacity use. We consider that this proposal would further Ofcom's duty to secure the optimal use of the electromagnetic spectrum and the availability of a wide range of radio services which (taken as a whole) are of high quality (section 3(2)(a) and (c) of the Communications Act).

Adopting a co-regulatory approach based on a simple, output-based code, as laid out in the main consultation document, has the following benefits:

- the industry as a whole is best placed to decide in detail how to reconcile the conflicting demands of quantity and quality in the interests of building and maintaining overall listener satisfaction, especially given the significant investments being made to build digital radio as a consumer proposition;
- it fulfils Ofcom's duty to have regard where relevant to the desirability of promoting and facilitating the development and use of effective forms of self-regulation (which includes maintenance of dialogue) (section 3(4)(c) Communications Act 2003).

There are two potential disadvantages of the approach.

- Using the co-regulatory process to resolve demonstrably unsatisfactory quality broadcasts could be quite slow to apply. However, this appears unlikely to be needed for the industry as a whole;
- The process of compiling and reporting activities on quality implies an additional burden for licensees. However, Ofcom's understanding is that the work undertaken in the industry relating to quality is already significant, and

the incremental burden of light, high-level reporting should be small in context.

*Apply external regulation to all relevant factors which determine quality*

The range and interdependency of factors which affect sound quality on digital radio is quite complex, and the development of core technologies is rapid, which would make a truly accurate external regulation of quality burdensome for regulator and regulated alike. It would require the application of a comprehensive set of detailed regulatory requirements in relation to the generation, handling (including storage and retrieval) and coding of audio broadcast on digital radio.

**Preferred option: To establish a system of co-regulation, based on outputs.**

A new, output-based code would require licensees to make properly informed choices about the objectives appropriate to the services carried, and the technical provisions necessary to achieve them. It also provides the means for Ofcom to intervene in the event that the outcomes are, by general consensus, not serving the public interest. The proposed code is laid out in section 7.8 of the consultation document.

**Update following consultation**

The consultation responses from industry were broadly in support of the proposal, in particular there was an agreement that bit rates by themselves were a poor proxy for quality so the no change would be inappropriate.

The concerns of the individuals and organisations about the quality of services if the bit rates were reduced reinforced our view that the option to simply reduce the bit rate would not be an effective way to regulate quality due to the risk that there would be no accompanying coding improvements.

There was no support for the option of additional external regulation.

Therefore our preferred option is still to establish a system of co-regulation based on outputs.

## E2. The regulation of localness on analogue commercial radio

### Policy Proposals

There are four areas where policy changes have been proposed in relation to the regulation of local commercial analogue radio. The areas are:

- Studio location;
- Automation;
- Local news delivery; and
- Ensuring compliance.

### Studio Location

Under section 314, Ofcom is required to secure that where programmes consisting of or including local material are included in a station's format, a "suitable proportion" of them consists of locally-made programmes. "Locally-made" is defined in the legislation as "made wholly or partly at premises in the area or locality for which that service is provided". Currently, Ofcom applies "locally-made" as made in a station's Measured Coverage Area ("MCA"). However, there are different ways in which this could be interpreted.

### Options

- Programmes must be made at premises in a station's Total Survey Area ("TSA") in order to be "locally-made";
- Programmes must be made at premises in the MCA of a station in order to be "locally-made" (current situation); and
- Programmes must be made at premises in the area which the licence is designed to service, as set out in the original licence advertisement ("licensed area") in order to be "locally-made".

### Option Evaluation

*Programmes must be made at premises in the station's Total Survey Area ("TSA") in order to be "locally-made"*

A station's TSA is defined by the radio company. It is the area within which the station seeks to measure its audience. It is not a statutorily defined concept, and is not used for regulatory purposes. A station can change its TSA whenever and however it wishes. A station's TSA can be smaller or larger than its MCA or licensed area. We consider that this option is not appropriate because a station's TSA can be changed as a station wishes. Accordingly, using TSA would not give a sufficiently clear and stable regulatory outcome.

*Programmes must be made at premises in the Measured Coverage Area of a station in order to be "locally-made"*

This would continue the current requirement (established by the Radio Authority) that stations providing locally produced and presented output should do so from a studio located within their MCA. The MCA is a technically-defined area within which radio signals of a certain strength can be received.

We consider that this would satisfy the requirement in relation to "locally-made programmes" under section 314 of the Communications Act. It would provide a clear and stable regulatory outcome, as each station's MCA is defined by Ofcom. However, this definition means that stations cannot produce "locally-made" content from all locations within their licensed area, as the MCA is generally smaller than the licensed area.

*Programmes must be made at premises in the area which the licence is designed to serve, as set out in the original licence advertisement ("licensed area") in order to be "locally-made"*

This option would allow stations to have greater flexibility in where they locate their studios and produce "locally-made" content than is presently the case. It may allow some radio stations operating in nearby areas to co-locate studios, to the extent their licensed areas overlap but their MCAs do not.

Co-locating studios can result in significant savings on premises and administrative overheads. It could also make it easier to put in place more effective management and career development structures.

We consider that this option would allow Ofcom's and licensees' obligations under section 314 of the Communications Act to be satisfied with the potential benefits outlined above and without any additional net cost to Ofcom or licensees. We do not believe that this slight increase in the area in which a station can locate its studios will adversely affect localness. Therefore, this is our preferred option. In selecting this as our preferred option, we have had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (as we are required to do under section 3(3) of the Communications Act).

### **Update following consultation**

The respondents were largely in favour of this proposal. There were also a number in favour of relaxing the regulations further, particularly to the option of relaxing the definition to the TSA. However we have not been presented with anything that changes our view that this option is inappropriate as a station's TSA can be changed as a station wishes so would not give a sufficiently clear and stable regulatory outcome.

There was a concern from some respondents that if definition was changed the stations would lose touch with their local communities. We accept this concerns and this is an additional reason for rejecting the idea of removing all restrictions.

Therefore our preferred option is still that programmes must be made at premises in the area which the licence is designed to serve, as set out in the original licence advertisement ("licensed area") in order to be "locally-made"

### **Automation**

Automation was defined by the Radio Authority as "computer controlled programming, involving the music, voice tracks, drop-ins, commercials and other

programming elements being played in accordance with a pre-defined schedule and which is not under the direct control of an on-air presenter” (Radio Authority Programme Code, part 23).

The current automation rules, drawn up by the Radio Authority, differ by waveband and station size, as laid out in the consultation document, but, in summary, are generally limited by the Programme Code to between two and four hours per day during daytime hours, apart from a handful of specific exemptions, where more than four hours of automation are permitted. The question is whether these rules on automation are necessary in order for Ofcom to perform its statutory duties.

## Options

- Leave the current automation rules as they are
- Remove specific limits on the amount of automation

## Option Evaluation

*Leave the current automation rules as they are*

There is no direct statutory requirement to regulate automation. As set out in the original consultation document, the automation rules were established by the Radio Authority because of concerns about the quality of automated output, and to act as a 'proxy' for localness.

We consider that continuing with the current automation rules would satisfy Ofcom's duty to ensure the availability of a wide range of radio services which (taken as a whole) are of high quality, and would satisfy Ofcom's duties in respect of localness.

*Remove specific limits on the amount of automation*

While the current rules on automation would satisfy the duties outlined above, having regard to the principles under which regulatory activities should be proportionate and targeted only at cases in which action is needed, we consider that the specific limits on the amount of permitted automation should be removed, subject to certain safeguards.

This deregulatory proposal would, we consider, still satisfy Ofcom's obligations to secure quality of output. This is because, as outlined in the consultation document, as the sophistication of automation has improved, we no longer believe it is necessary for automation to be restricted to a specific amount in order to guarantee quality. We consider that this proposal would also still secure Ofcom's duties in relation to localness under section 314 of the Communications Act, as each station's format defines a certain number of hours which must be locally made and presented and these limits would still apply (automated content during these hours would still have to include local material and be locally-made).

In addition, we believe it is appropriate to have guidance that stations should be able to respond to local events in a timely manner and provide live local programming in the way and at times that audiences expect.

This option, removing specific limits on the amount of automation, would give stations more flexibility in terms of the production of their programming and would not involve any additional cost to the industry or Ofcom in itself. However, as set out below, we consider that the package of deregulatory proposals (including this one) in relation to

local analogue radio broadcasting on which we are consulting would require safeguards to be put in place. The impact and the costs of those safeguards are discussed below.

### **Update following consultation**

The respondents were largely in favour of this proposal. Those that were not in favour generally wanted some relaxation but wanted some controls left in place. There was also a concern that there was no unambiguous proxy for the quality of output so wanted an input proxy to remain.

In response to the desire for some controls to remain we will require licensees to state in their Public File how many hours they are automating in daytime (6am – 7pm), but not which those hours are. In addition, Ofcom will collect information on which hours are being automated throughout the day, directly from stations on a quarterly basis. Ofcom will also reserve the right to reserve the right to reconsider whether specific limits on automation should be reintroduced if the removal of regulation in this area proves to be detrimental to the overall quality of radio services

Therefore our preferred option is still to remove specific obligations on automation although output will be monitored through the public file and through Ofcom data collection.

### **Local news delivery**

At present, with very few exceptions, each station's licence includes a requirement to produce local news, which, implicitly, is locally presented. This is the only current format requirement for most stations in relation to local news.

The Radio Authority considered that the provision of local news was covered as part of the 'locally produced and presented' output requirements in each station's format, and, therefore, any station whose format calls for locally produced and presented output is currently required to produce any local news bulletins from a studio within its coverage area. The Radio Authority also stated that all such stations must have a journalistic presence (i.e. an in-house news operation) unless permission for alternative arrangements had been given.

These alternative arrangements are known as 'news hubs', and involve a station being allowed to broadcast local news bulletins presented from another radio station's studios. The Radio Authority agreed to such arrangements in only a limited number of cases, and only for stations in common ownership within a geographically-limited area. The formats of such stations specify the exact out-of-area station from which bulletins must be presented, and also require the maintenance of a full-time or demonstrable journalistic presence for a specified period (either eight daytime hours – i.e. at least one journalist, or weekday daytime - 6am-7pm – i.e. at least two journalists).

The requirements of news hub arrangements go beyond what is set out in stations' formats, however. The Radio Authority also required that the information about the news hub that had been included in the application for such an arrangement (such as aggregate staffing levels across participating stations, the location of the news hub, weekend arrangements and the pre-recording of bulletins) formed part of the agreement, and could not be deviated from without the permission of the Authority.



Ofcom's objective is to ensure the provision of a high quality news service, including local and national news, by local radio stations, to the extent required by each station's format. We have considered options which would allow us best to achieve this objective.

### Options

- Leave rules as they are (i.e. local news must be locally made and locally presented unless stations are expressly granted permission to set up news hubs, with whatever additional regulations Ofcom deems appropriate);
- Allow stations to form news hubs without a requirement to ask for permission, while ensuring full time local journalistic presence. Local news provision would remain in licensees' formats but no longer be included as part of the 'locally produced and presented' output; and
- No regulation on the location of news readers or on journalistic cover.

### Option Evaluation

*Leave rules as they are (i.e. local news must be locally made and locally presented unless stations are expressly granted permission to set up news hubs, with whatever additional regulations Ofcom deems appropriate).*

As discussed in the consultation document, the current rules were put in place by the Radio Authority to protect the presence of local, on-site journalists and to ensure that stations do not use news hubs simply as a cost-cutting measure. We consider that retaining these rules would meet the localness requirements of S314 of the Communications Act.

*Allow stations to form news hubs without a requirement to ask for permission, while ensuring full time local journalistic presence. Local news provision would remain in licensees' formats but no longer be included as part of the 'locally produced and presented' output.*

The main advantage of news hubs is that they can free up reporting staff to carry out more local newsgathering, while a centralised team can compile and present bulletins for a number of stations.

In making the changes which would allow news hubs without prior regulatory approval, however, we believe that some guidelines are needed regarding local journalistic presence. Under this option, therefore, the proposal is that each station should provide direct and accountable editorial responsibility, based within the licensed area, equivalent at least to full time professional journalist cover for all of the hours during which its licensed format specifies that it will provide local news programmes.

Listeners in our survey felt it was important that local stations had local news reporters but, providing this was the case, didn't mind where the news was read from.

As laid out in the consultation document, we do not believe that the timeliness or quality of news would be adversely affected by these changes. Indeed, we believe that it gives stations the flexibility and opportunity to potentially increase the timeliness and quality of local news output.

We consider that this would allow Ofcom's and licensees' obligations regarding localness under section 314 of the Communications Act to be satisfied. This would also satisfy our duty to secure high quality as we are required to under section 3(2) of the Communications Act.

Of the options we have identified, this is our preferred option. In selecting this as our preferred option, we have had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (as we are required to do under section 3(3) of the Communications Act). However, as outlined in our consultation document, we would welcome views as to whether there is a better way to meet our objective which is more consistent with our aim of moving the emphasis from input to output regulation.

This option may involve additional cost if the stations do not currently have a full time journalistic presence.

In addition, as set out below, we consider that the package of deregulatory proposals (including this one) in relation to local analogue radio broadcasting on which we are consulting would require safeguards to be put in place. The impact and the costs of those safeguards are discussed below.

*No regulation on the location of news readers or on journalistic cover*

It is our present view that having no regulation on journalistic cover would not allow Ofcom to ensure that the quality of the radio service did not suffer, as we are required to do under section 3(2) of the Communications Act.

It would not protect against the original concern of the Radio Authority that allowing news hubs would simply be used to cut costs or their belief that, in the absence of a local news presence, the news hub would drift further away from the local station's area, leaving significant local stories to be covered remotely and bulletins to be recorded even further in advance of transmission.

**Update following consultation**

We recognised in phase 1 that the proposal to require each station to provide direct and accountable editorial responsibility, based within the licensed area, equivalent at least to full time professional journalist cover for all of the hours during which its licensed Format specifies that it will provide local news programmes was not consistent with the move from input to output regulation.

There was a high level of disagreement with this proposal from many within the industry, who argued that it was onerous and would not deliver the best quality news service. In particular that to require a professional journalist to be employed locally for all of the hours that a station is required to provide local news is not a sensible requirement. It could actually damage the quality of news in some instances and could lead to significant additional costs for stations, particularly those smaller stations, many of which are not currently in profit.

We accept this argument and the potential impact on licensees. We confirm, therefore, that groups of stations will be allowed to operate news hubs as they see fit, but we have revised the wording of the proposal regarding the need for full time professional journalists. The guidance now says that Ofcom believes each station should have direct and accountable editorial responsibility for covering its licensed area. It also believes that the appropriate provision of professional journalistic cover, based within the licence area, on days when local news provision is a Format

obligation, is a reasonable minimum expectation. In addition we have clarified the status of guidance which may have been a source of confusion in the original consultation.

As a result of these changes we feel that we will be able to fulfil our duties without a disproportionate impact on stakeholders.

## Ensuring compliance

The present restrictions on the level of automation, the method of local news delivery and studio location requirements, were all introduced by the Radio Authority as 'proxies' for localness and/or quality, both of which are legislative concerns for Ofcom. If these 'proxy' regulations are to be loosened, Ofcom will require a way to ensure that licensees' output complies with the obligations set out in their formats.

The Radio Authority did not conduct routine monitoring, and largely relied upon complaints from listeners and/or competitors to indicate cases of non-compliance. In practice, there was a large degree of trust between stations and the Radio Authority to ensure commitments were being met.

### Options

- To continue to rely largely on complaints to monitor stations;
- To create a format and localness file system where stations would show details of how they are meeting localness and local news obligations and how much of their output is automated. Ofcom would continue to carry out spot checks and investigate complaints; and
- To have regular formal returns collected and checked by Ofcom.

### Option Evaluation

#### *To continue to rely largely on complaints to monitor stations*

The Radio Authority did not conduct routine monitoring, and largely relied upon complaints from listeners and/or competitors to indicate cases of non-compliance. However the Communications Act now lays a specific responsibility for localness on Ofcom. A system that solely relied on complaints may carry a risk that the new statutory duties are not fulfilled, particularly if our proposals to focus more on outputs and less on input regulations are accepted.

*To create a format and localness file system where stations would show details of how they are meeting localness and local news obligations and how much of their output is automated. Ofcom would continue to carry out spot checks and investigate complaints*

A format and localness file system would reflect the transparency and openness encouraged by Ofcom. It would not, and should not, negate the need for Ofcom monitoring where it is felt necessary, but could contain the operation to the point where only occasional spot-checks would be required.

The file will be used to help Ofcom monitor the statutory localness obligation under section 314 of the Communications Act. As such, we consider that this proposal would help to secure Ofcom's duties in relation to localness. The new requirements are to help to ensure that the relaxation of the regulations do not lead to a reduction

in the delivery of localness, as required by the station formats, and overall quality which, as noted above, are legislative duties. In addition, the data that is provided may be used to provide evidence for Ofcom's change of control reviews under section 355 of the Communications Act.

There will be extra cost to the industry in collecting and providing this information. This may be offset, in part or in total, by the benefits from implementing the other proposals described above. However, for stations who do not decide to take advantage of the proposals, this would represent an additional cost without any benefit.

The compliance costs may be proportionately higher for smaller stations than larger stations. However smaller stations may also tend to have fewer variations in journalists, journalists rosters, automation and networking. Therefore, it is possible that they will not need to make frequent changes to the file.

It is proposed that this will be carried out in addition to the existing system of monitoring complaints.

The additional monitoring and spot checks will be carried out by existing Ofcom staff therefore there will not be any additional cost to Ofcom.

*To have regular formal returns collected and checked by Ofcom*

Regular formal returns collected and checked by Ofcom would achieve the same goals as a format and localness file, spot checks and self monitoring.

However, having regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (as we are required to do under section 3(3) of the Communications Act), we do not consider that this option would be appropriate. It would be inconsistent with Ofcom's regulation of television output, which is moving away from a "box ticking" system. It would also be labour intensive and expensive, and would not be in line with Ofcom's principles to operate with a bias against intervention and always to seek the least intrusive regulatory mechanisms to achieve its policy objectives

**Update following consultation**

The respondents had qualified agreement with this proposal. A widely shared concern was around security firstly if staffing and detailed automation was included in the file and secondly if the file had to be available for inspection at their offices.

We still believe that a Public File is the best option, however we accept the security concerns and have adapted the requirements of the file to reflect that.

## E3. Format change

### Introduction

A regime based on Formats is simple and transparent; however there will always be occasions on which Formats need to change. The Broadcasting Act 1990 (as amended) sets out the circumstances in which Ofcom may consent to a departure from the Format of a service. One of four grounds specified in the Act must be met for Ofcom to be able to consent to the change. However the legislation leaves to Ofcom's judgement the decision as to whether to permit a change, even if one of the statutory criteria is satisfied. We have considered how we may provide guidance as to how we may exercise that judgement.

### Policy Options

- Case by case analysis
- Outline a framework for format change requests
- No controls on format change

### Option Evaluation

#### *Case by case analysis*

This is the current situation. However continuing to do this does not give the industry guidance as to what process Ofcom will follow once they request a format change. Continuing as before will not lead to any additional cost to Ofcom or the industry.

#### *Outline a framework for format change requests*

Putting into place a framework for dealing with Format change requests as described in the document will give clarity to the industry as to the process that will be followed if they should wish to change their format. This option will not lead to any additional cost to Ofcom or the industry. The proposed process is described in detail in the main document. This is our preferred option

#### *No controls on format change*

Formats are the primary tool for the regulation of analogue commercial radio. Not having any controls on format changes would mean that stations would be able to provide whatever content they wanted. This would have the advantage of increased flexibility and it may lead to increased innovation.

However, the Broadcasting Act 1990 lays out the circumstances in which Ofcom may consent to a format change. Ofcom does not have discretion in choosing to look at these criteria so we would not be able to entirely relax controls on format changes. In addition, Ofcom has a duty to secure "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". If there are no controls on the changes that can be made to a format then we will not be able to ensure that we fulfil our statutory duty. The existing statutory duties will still need to be carried out so there will be no impact on the cost to Ofcom or the industry