

## **CONSULTATION LETTER SENT TO ALL HOLDERS OF LOCAL ANALOGUE SOUND BROADCASTING LICENCES ON 19 SEPTEMBER 2003**

Copies of the 'marked-up' version of the proposed standard form licence referred to in this letter are available by request. Please contact Gwen Morgan on 020 7887 4384.

### **A. Consultation on Amendments Proposed to be made to your Local Sound Broadcasting Licence**

1. As a result of the entry into force of the provisions of the Communications Act 2003 (the "Act"), including Paragraph 30 of Schedule 18 to the Act, Ofcom intends to vary your licence by means of a notice of variation. In particular, it is proposed that the notice of variation will make amendments to the front page of your licence and replace Annexes 1 to 3 of your licence with a schedule of conditions (the "Schedule"). The proposed amendments reflect changes to the regulatory regime brought about by the Act\* and, so far as is possible within the provisions of the regulatory regime, attempt to ensure consistency across all classes of Ofcom licences, both for television and radio services. Overall, the proposed amendments will result in the conditions of your licence to all intents and purposes being identical to those of the standard form local sound broadcasting licence (the "standard form licence") which Ofcom will issue to all new local sound broadcasting licensees except that it will continue in force for the licence period as currently defined in your licence. The notice of variation, which will be issued following completion of the consultation process, will come into effect on the date of commencement of the relevant statutory provisions (expected to be 29 December 2003), from which date you must comply with the terms and conditions of your licence as amended by the notice of variation.
2. Under Condition 20 of Part I of Annex 2 of your licence, and in accordance with Section 86 (5) of the Broadcasting Act 1990 (the "1990 Act"), your licence cannot be varied unless you have been given a reasonable opportunity to make representations concerning the proposed variations. You will therefore find enclosed with this letter a copy of the proposed standard form licence, both in 'clean' form and in 'marked-up' form showing changes from the current standard form local sound broadcasting licence. Please submit any representations you may have on the amendments proposed to be made to your licence to Peter Bourton at Ofcom by 27 October 2003.
3. This consultation process is concurrently taking place with all current local sound broadcasting licensees. We will consider all the representations received from these licensees by 27 October 2003 prior to finalising the standard form licence.

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\* A copy of the Act can be downloaded from [www.legislation.hmsso.gov.uk](http://www.legislation.hmsso.gov.uk) or purchased from The Stationery Office Ltd (TSO).

4. You will find below a description of some of the amendments that Ofcom proposes to make to your licence by the notice of variation (as described above at point 1, except for the period of the licence, the Schedule to the notice of variation will be identical to the Schedule to the standard form licence). Please note that this description is only illustrative and is not exhaustive: it is only an indication of certain amendments which may affect your current rights and obligations. The fact that a provision has been crossed out in the 'marked up' form of the proposed standard form licence does not necessarily mean that it has been omitted, as it may be found elsewhere in the proposed standard form licence. Furthermore, the fact that a provision has been deleted does not necessarily mean that it is no longer enforceable. It may still be enforceable under another licence condition or by other means such as a code of practice. It is your responsibility to read the proposed standard form licence carefully, and take appropriate legal advice, if necessary, to determine how your licence as amended by the notice of variation would affect your business.
5. When making representations about the proposed amendments, please bear in mind that Ofcom is obliged by the Act to make certain amendments to your licence. Representations are therefore sought on areas where Ofcom will be able to exercise some discretion in its interpretation of the statutory provisions and in the drafting which is used to incorporate those provisions in the standard form licence.

**B. General and/or Minor Amendments to your Licence**

6. Ofcom proposes to make some general and/or minor amendments to your licence. For example, as a result of the entry into force of the relevant provisions of the Act, references to the Radio Authority and the Broadcasting Standards Commission will be replaced by references to Ofcom. To ensure consistency with all classes of licences granted by Ofcom, it is proposed that references to the provision by you of a “Programme Service” will be replaced by references to a “Licensed Service” (the service which you provide under your licence, as detailed in Annex 4 of your licence, will not change), the order and headings of some of the conditions in your licence will be changed and some minor variations will be made to the text of some of the conditions. The conditions in your licence will be included in a Schedule (rather than, as presently, in a number of Annexes) and an Annex will record the description of the service you provide including your “promise of performance” and technical specification (presently Annex 4 of your licence, the content of which will not change save where necessary to replace references to the Radio Authority with references to Ofcom).

**C. Main Amendments to your Licence**

Electronic communications networks and services and the Technical Code

7. Your licence will be amended by the insertion of references to compliance with the requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 (see paragraph 3 on the front page of, and Condition 29 (2) (f) of the Schedule to, the proposed standard form licence). It is also proposed that your licence be amended by the insertion of a condition requiring compliance with the provisions of the Technical Code (as defined in the standard form licence) to the extent that it applies to you (see paragraph 3 on the front page of, and Condition 2 (3) of the Schedule to, the proposed standard form licence).

#### Deregulation and Contracting Out Act 1994

8. The Act (Section 1 (7)) allows the functions conferred on Ofcom to be contracted out under the Deregulation and Contracting Out Act 1994 (the “DCO Act”). It is proposed that your licence be amended to include a reference to this in Condition 1 (6), so that in the event that an Order is made under the DCO Act authorising a person to exercise any functions of Ofcom, relevant references in your licence to Ofcom will include a reference to that person.

#### Fees

9. It is proposed that the wording of the condition in relation to fees (see Condition 3 of the Schedule to the proposed standard form licence) be amended in order to facilitate Ofcom's use of its discretion to alter present arrangements.

#### V.A.T.

10. It is proposed that a new condition in relation to V.A.T. will be included in your licence (see Condition 4 of the Schedule to the proposed standard form licence). You should note that V.A.T. is not currently chargeable on licence fees and there is no current intention for it to become chargeable on licence fees.

#### Compliance with certain standards and requirements

11. As a result of the entry into force of the relevant provisions of the Act, new conditions in relation to general standards and requirements and advertising and sponsorship standards and requirements (see Conditions 5 and 6 of the Schedule to the proposed standard form licence) are proposed to replace Conditions 3 and 4 of Part I of Annex 2 of your licence. Under these proposed conditions you would need to comply with a number of general standards and specific advertising and sponsorship standards and observe the provisions of the Standards Code (as defined in the proposed standard form licence). In particular, you should note Condition 6 (3) of the Schedule to the proposed standard form licence which describes what is considered ‘political’ in the context of advertising and sponsorship requirements. You should also note that there are specific licence conditions which refer to the requirement to maintain a proper separation between advertising and programming, and compliance with the ICSTIS code on premium

rate telephone services. There is also a provision requiring compliance with Ofcom's rules on alcohol advertising.

#### Provision of information to Ofcom

12. In addition to your current information obligations, it is proposed that you would be required to provide information for Ofcom to determine whether you are a disqualified person by virtue of Schedule 2 to the 1990 Act or whether in holding your licence you contravene requirements imposed by or under Schedule 14 to the Act. You would also be required to inform Ofcom if you, or your parent company, suffers an insolvency-type event or if you, or any individual having control over you (as defined in that condition), is sentenced to a term of imprisonment on conviction of a criminal offence. You would also be obliged to inform Ofcom if judgment is awarded against you in any court proceedings brought against you in respect of the inclusion in the licensed service of a number of specified matters (see Condition 9 of the Schedule to the proposed standard form licence).
13. It is proposed that the condition in relation to provision of information on change of control be amended (see Condition 10 of the Schedule to the proposed standard form licence).

#### Fair and effective competition

14. Further to section 316(1) of the Act, Condition 9 of Part 1 of Annex 2 of your licence in relation to fair and effective competition will be varied. The revised condition differs from the existing one in that it obliges you not to do anything which is prejudicial to fair and effective competition. In addition it requires you to comply with any code or guidance (as well as any direction) issued by Ofcom for the purposes of ensuring fair and effective competition. The Ofcom Board considers that it would be more appropriate to vary the licence in this way than proceed under the Competition Act 1998. The Competition Act does not in itself enable a variation to a licence condition. In particular, your existing condition already provides for *ex ante* competition regulation and the variation enables such regulation to be carried out in a broad and flexible manner, consistent with Ofcom's duty under the Communications Act to promote competition. The variation also provides clarity in specifying that any codes or guidance on competition matters are directly enforceable by Ofcom (subject to the provisions set out in section 317 of the Act). Ofcom also considers it relevant that in any event before taking enforcement action under this condition, it would then need to consider whether, in the circumstances, proceeding under the Competition Act would be more appropriate. The substance of the new condition is consistent with that contained in other, existing Broadcasting Act licences and Ofcom is seeking to vary all licences so that the condition relating to competition is expressed in identical terms. For the avoidance of doubt, you are hereby notified under the

provisions of section 317(5) of the Act that you may appeal a decision to make this variation to the Competition Appeal Tribunal.

#### Compliance

15. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 11 (Restrictions on interests held in other media services) of Part I of Annex 2 of your licence be amended to include obligations in relation to Schedule 14 to the Act (see Condition 13 of the Schedule to the proposed standard form licence). In this respect, please note the transitional provisions for an order under Paragraph 11 of Schedule 14 to the Act set out in Paragraph 14 of that Schedule.
16. It is proposed that Conditions 5 (Copy clearance) and 13 (Obligation to comply with directions issued by the Authority) of Part I of Annex 2 of your licence be replaced with a new condition in relation to compliance (see Condition 15 of the Schedule to the proposed standard form licence).

#### Standards complaints

17. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 17 (Complaints) of Part I of Annex 2 of your licence be replaced with a new condition in relation to standards complaints (see Condition 18 of the Schedule to the proposed standard form licence). Although not yet finalised, work is currently underway to establish co-regulatory mechanisms for handling advertising standards complaints. This may involve an Order being made under the DCO Act (see point 8 above).

#### Fairness complaints

18. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 18 (The Broadcasting Standards Commission) of Part I of Annex 2 of your licence be amended including, for example, an obligation to comply with certain information requests from Ofcom and to observe the Fairness Code (as defined in the standard form licence) (see Condition 19 of the Schedule to the proposed standard form licence).

#### Publicising Ofcom's functions

19. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to publicising Ofcom's functions be included in your licence (see Condition 20 of the Schedule to the proposed standard form licence).

#### Power of Ofcom to vary Licence Conditions

20. As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 20 (Power of the Authority to vary Licence Conditions) of Part I of Annex 2 of your licence be amended to include a reference to Ofcom's duties under Sections 355 and 356 of the Act (Variation of local licence following change of control).

#### Equal opportunities and training

21. As a result of the entry into force of the relevant provisions of the Act, it is proposed that a new condition in relation to equal opportunities and training be included in your licence (see Condition 23 of the Schedule to the proposed standard form licence). For example, companies which, individually, have over twenty employees or are part of a group having in aggregate over twenty employees, would be expected to make arrangements to promote, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.

#### Interest on late payments

22. It is proposed that Condition 2 (6) of Annex 3 of your licence be replaced with a new condition in relation to interest on late payments (see Condition 26 of the Schedule to the proposed standard form licence).

#### Sanction for breach of licence conditions

23. It is proposed that amendments be made to Condition 2 (Sanctions for breach of Condition) of Annex 3 of your licence (see Condition 28 of the Schedule to the proposed standard form licence). For example, the amount of the financial penalty that can be imposed by Ofcom for breach of a licence condition will be increased from £50,000 to £250,000 (note that the Secretary of State will still be able to specify another sum by order; see Condition 28 (2) (b) of the Schedule to the proposed standard form licence). However, please note that breaches committed before the coming into force of the new financial penalty provisions in the Act will attract fines at the current statutory level.

#### Revocation

24. It is proposed that amendments be made to Condition 3 (Revocation) of Annex 3 of your licence (see Condition 29 of the Schedule to the proposed standard form licence). In particular, you should note that Ofcom would be able to revoke your licence if the holding of your licence contravenes a requirement imposed by or under Schedule 14 to the Act. You should also note that although the wording in Conditions 3 (2) (c) and (g) of Annex 3 of your licence would no longer be included in the new condition on revocation, Ofcom envisages that the occurrence of any of these events (broadly insolvency-type events and failure to make payment on the due date) would still be caught by the condition.

Yours faithfully,

**Kip Meek**  
**Senior Partner, Content and Competition**