

Title: Protection from Extremist Radio Content  
IA No:

RPC Reference No:

Lead department or agency: DCMS

Other departments or agencies: N/A

## Impact Assessment (IA)

Date: 27/09/2016

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary legislation

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### Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

#### Cost of Preferred (or more likely) Option

| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANDCB in 2014 prices) | One-In, Three-Out | Business Impact Target Status |
|-------------------------|----------------------------|---|-------------------|-------------------------------|
| £m                      | £m                         | £m  | Not in scope      | Qualifying provision          |

#### What is the problem under consideration? Why is government intervention necessary?

Ofcom is responsible for regulating the broadcasting of extremist content, as set out in its statutory Broadcasting Code. Rule 3.1 of the Code stipulates that "material likely to encourage or to incite the commission of crime or disorder" must not be included in television or radio services". We have identified a gap in the regulatory framework that limits Ofcom's ability to quickly take enforcement action when such content has been broadcast by a licensed UK radio station and means that extremist material of the type that is "likely to encourage or to incite the commission of crime or disorder" potentially could be broadcast repeatedly by the same station before Ofcom can suspend the radio service's licence and stop broadcasts.

#### What are the policy objectives and the intended effects?

The policy objective is to ensure that Ofcom has the power rapidly to suspend the licence of a radio broadcaster (whether analogue or digital) which includes in its services content which is likely to encourage or to incite the commission of crime or disorder. This will allow Ofcom to act quickly and effectively against any such content.

#### What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

##### Option 0: Do Nothing

Under the do nothing option Ofcom have no ability to rapidly apply the existing sanction of notifying and suspending the licence of a UK-based radio station broadcasting extremist content in breach of Rule 3.1 of the Broadcasting Code. This option represents the counter-factual.

##### Option 1: Preferred Option


Legislate, via an amendment to the Broadcasting Act 1990, to allow Ofcom to take enforcement action rapidly against a licensed radio station broadcasting extremist content.

#### Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year

|   |              |              |               |              |
|---|--------------|--------------|---------------|--------------|
| Does implementation go beyond minimum EU requirements?  | N/A          |              |               |              |
| Are any of these organisations in scope?  | Micro<br>Yes | Small<br>Yes | Medium<br>Yes | Large<br>Yes |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions?<br>(Million tonnes CO <sub>2</sub> equivalent) | Traded:      |              | Non-traded:   |              |

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible  
SELECT SIGNATORY:

 Date: 11/10/16

# Summary: Analysis & Evidence

# Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

| Price Base<br>Year N/A | PV Base<br>Year N/A | Time Period<br>Years N/A | Net Benefit (Present Value (PV)) (£m) |           |                  |
|------------------------|---------------------|--------------------------|---------------------------------------|-----------|------------------|
|                        |                     |                          | Low: N/A                              | High: N/A | Best Estimate: 0 |

| COSTS (£m)    | Total Transition<br>(Constant Price) Years |     | Average Annual<br>(excl. Transition) (Constant Price) | Total Cost<br>(Present Value) |
|---------------|--|-----|---|-------------------------------|
|               | Low  | N/A |   |                               |
| High          | N/A  | N/A | N/A   |                               |
| Best Estimate | 0  | 0   | 0   |                               |

### Description and scale of key monetised costs by 'main affected groups'

DCMS and Ofcom estimate that there are no additional operating costs on radio (analogue and digital) stations. UK-based licensable radio stations must comply with the Broadcasting Code. This is already a condition of the licences granted to broadcasters by Ofcom to transmit their output. Ofcom have also confirmed that they would not incur any additional administrative costs associated with enforcement. Any staff costs incurred are judged to be part of business-as-usual activities.

### Other key non-monetised costs by 'main affected groups'

N/A

| BENEFITS (£m) | Total Transition<br>(Constant Price) Years |     | Average Annual<br>(excl. Transition) (Constant Price) | Total Benefit<br>(Present Value) |
|---------------|--|-----|---|----------------------------------|
|               | Low  | N/A |   |                                  |
| High          | N/A  | N/A | N/A   |                                  |
| Best Estimate | 0  | 0   | 0   |                                  |

### Description and scale of key monetised benefits by 'main affected groups'

N/A

### Other key non-monetised benefits by 'main affected groups'

In the case of a radio station breaching Rule 3.1 of Ofcom's Broadcasting Code by broadcasting extremist content, strengthening Ofcom's ability to take enforcement action more rapidly than at present and preventing this content from being broadcast multiple times will yield benefits to consumers who would no longer be exposed to this type of extremist content. However, we estimate that there is a zero-to-very small probability of this occurring.

Key assumptions/sensitivities/risks

Discount rate

N/A

We assume that no such content is currently broadcast, not that such content will be widely broadcast in future.

## BUSINESS ASSESSMENT (Option 1)

|   |             |        |   |
|---|-------------|--------|---|
| Direct impact on business (Equivalent Annual) £m: |             |        | Score for Business Impact Target (qualifying provisions only) £m: |
| Costs: 0  | Benefits: 0 | Net: 0 |   |
|   |             |        | 0   |

# Evidence Base

## Problem under consideration and rationale for intervention

Ofcom, the UK's independent communications regulator, regulates radio broadcasters by way of a licensing regime. Commercial and community stations operating in the UK are required to hold an Ofcom licence. This licensing regime requires radio broadcasters to comply with a number of obligations including the standards of programme content that can be broadcast. All UK based licensable radio stations must comply with Ofcom's statutory programme standards code (the Broadcasting Code). This is required as a condition of the licences granted to radio broadcasters by Ofcom to transmit their programme output. The BBC is also subject to the Broadcasting Code for its national and local radio services.

Existing broadcasting legislation (the Broadcasting Acts 1990 and 1996, and Communications Act 2003) gives Ofcom powers to regulate UK-based licensed radio services broadcasting programme content that is in breach of rule 3.1 of the Broadcasting Code, which stipulates that "*material likely to encourage or to incite the commission of crime or disorder must not be included in television or radio services*", by applying the following sanctions:

- Impose a financial penalty on the licensee;
- Require the licensee to broadcast a statement of Ofcom's findings;
- Shorten the licence by up to two years;
- Suspend the licence for up to six months;
- Revoke the licence.

The Government is working with Ofcom to strengthen its role to tackle the broadcast of extremist content. We have identified that at present there is a gap in the regulatory framework which limits Ofcom's ability to quickly take enforcement action to protect listeners from harmful extremist content.

Currently, if Rule 3.1 of the Broadcasting Code is breached by a licensed radio station, Ofcom would have to notify the station that this had happened. But even if there was repeated breaches of the rule, Ofcom would have to ask for representations from the radio station's licence holder before it could suspend the service. This means it would be possible that a broadcaster could transmit extremist material (of the type that is "*likely to encourage or to incite the commission of crime or disorder*") multiple times from the same radio station before Ofcom can suspend the licence and stop broadcasts.

Changes to the radio industry's landscape over the past 12 years with the expansion of digital radio and the significant growth in the number of commercial and community radio stations on air means that it is the right time to review the position. The Government believes it is in the public interest to deal with this limitation in the existing regulatory framework and strengthen the effectiveness of enforcement powers available under existing broadcasting legislation by ensuring that Ofcom is able to act rapidly and decisively to remove extremist content from the airwaves.

## Policy objectives and intended effects

The policy objective is to ensure that Ofcom have all the powers it requires to act quickly and decisively to remove extremist content from the airwaves. The proposed measure is a minor amendment of the Broadcasting Act 1990 which will ensure that Ofcom have the power to rapidly suspend the licence of any UK based radio station (whether analogue or digital) intentionally broadcasting programme content which is "*likely to encourage or to incite the commission of crime or disorder*" so that the station must stop broadcasting immediately;

pending an investigation by Ofcom about whether to revoke the station's licence. This will allow Ofcom to stop extremist material of this type being broadcast repeatedly by the same station.

The ability of Ofcom to take quick and decisive enforcement action against a radio service's licence holder will act as a deterrent against UK based radio services intentionally broadcasting extremist content (of the type that would be in breach of Rule 3.1 of the Broadcasting Code) on the airwaves and make it more difficult for extremists to spread their views.

## **Policy options considered**

### Option 0: Do Nothing

Take no action to deal with the shortcoming in the existing legislative framework which limits Ofcom's to take enforcement action rapidly against a radio station broadcasting extremist content. This option represents the counter-factual.

Under the do-nothing option Ofcom does not have the ability to rapidly apply the existing sanction of notifying and suspending the licence of a UK based radio operator broadcasting extremist content in breach of rule 3.1 of the Broadcast Code. This means extremist content of this type could potentially be broadcast multiple times from the same station before Ofcom can suspend the radio service licence and stop broadcasts (pending an investigation by Ofcom).

### Option 1: Preferred Option

The proposed measure is a minor amendment to Section 111B of the Broadcasting Act 1990. The amendment will give Ofcom the power to serve a notice and rapidly suspend, and if necessary revoke, the licence of a UK-based radio broadcaster (whether analogue or digital) that includes in its services programme content which is in breach of rule 3.1 of the Broadcasting Code. **The effect of Ofcom serving such a notice would be to suspend the radio station's licence so that the station must stop broadcasting immediately;** pending an investigation by Ofcom about whether to revoke the station's licence.

Sections 110 to 111B of the Broadcasting Act 1990 already give Ofcom the power to suspend, shorten or revoke broadcast radio licences when a station transmits material "*likely to encourage or to incite the commission of crime or disorder*". **The proposed measure will not change the grounds on which such action can be taken by Ofcom.** All that will change is the time-frame and process by which a radio service licence is suspended or revoked. The measure therefore only alters the process for exercising an existing regulatory power, rather than adding a further one.

The proposed measure – which was announced in the Counter Extremism Strategy (October 2015) - is intended to be used in only exceptional cases where a radio station has deliberately broadcast extremist material (of the type that is in breach of Rule 3.1 of the Broadcasting Code) and it will ensure that Ofcom is able to act quickly in this type of scenario to remove such content from the airwaves. The suspension of a licence is limited to 28 days after which there must be a decision either to revoke the licence altogether or re-instate it. During this period the licensee can make representations to Ofcom as to why it should be re-instated.

The proposed measure covering UK licensed radio broadcasters will bring radio into line with television. Ofcom already have a power under section 239 of the Communications Act 2003 allowing it to take enforcement action to rapidly suspend and, if necessary, revoke the licence of a UK based licensed television service broadcast via satellite, radio multiplex or cable where there has been a breach of Rule 3.1 of the Code. Although Ofcom have not yet used this power.

Ofcom have chosen to deal with the few cases (three) where there has been a breach of rule 3.1 of the Broadcasting Code by imposing financial penalties rather than suspend or revoke the licence because they were first time breaches for that licensee or it was only one programme and the breach was not repeated.

## **Cost Benefit Analysis (CBA)**

### Costs

#### *Monetised Costs*

DCMS and Ofcom estimate that **there are no additional operating costs on radio (analogue and digital) stations**. UK-based licensable radio stations must comply with the Broadcasting Code. This is already a condition of the licences granted to broadcasters by Ofcom to transmit their output.

**Ofcom have also confirmed that they would not incur any additional administrative costs** associated with enforcement. Any staff costs incurred are judged to be part of business-as-usual activities.

#### *Non-monetised Costs*

N/A

### Benefits

#### *Monetised Benefits*

N/A

#### *Non-monetised Benefits*

In the case of a radio station breaching Rule 3.1 of Ofcom's Broadcasting Code by broadcasting extremist content, strengthening Ofcom's ability to take enforcement action more rapidly than at present and preventing this content from being broadcast multiple times will yield benefits to consumers who would no longer be exposed to this type of extremist content. However, we estimate that there is a zero-to-very small probability of this occurring.

## **Risks and Assumptions**

We assume that no such content is currently broadcast, not that such content will be widely broadcast in future.

