

THE LEGISLATIVE REFORM (RENEWAL OF NATIONAL RADIO MULTIPLEX LICENCES) ORDER 2022

EXPLANATORY DOCUMENT BY THE DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT

1. Introduction

- 1.1. This explanatory document is laid before Parliament in accordance with section 14 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022 (“the draft Order”), which we propose to make under section 1 of that Act.
- 1.2. The purpose of the draft Order is to amend section 58 of the Broadcasting Act 1996 to allow the two national commercial radio multiplex licences (due to expire in 2023 and 2028 respectively) to be renewed to 31 December 2035. A radio multiplex (network) is the means by which digital radio services (i.e. radio stations) are broadcast. A radio multiplex consists of a number of stations bundled together to be transmitted digitally on a single frequency in a given licensed geographic area - in this case across the UK.
- 1.3. The Government is satisfied that requirements of the 2006 Act have been met. This includes that the provision made by the draft Order serves a purpose under section 1(2) (to remove or reduce burdens), that the relevant preconditions under section 3 are satisfied, and that the appropriate consultation has been carried out in accordance with section 13(1).
- 1.4. This explanatory document contains information for the Delegated Powers and Regulatory Reform Committee and the Business, Energy and Industrial Strategy Committee.

2. Background to the Order

- 2.1. The Broadcasting Act 1996 (“the 1996 Act”) sets out the legislative framework for the regulation of digital radio services. Ofcom issues two types of digital radio services licence under powers granted to them by Part II of the Act:
 - a digital sound programme licence for a person(s) wishing to operate a digital radio service (station); and
 - a radio multiplex licence for a person(s) wishing to provide a radio multiplex¹ (i.e. a digital radio network) service.

¹ Digital radio services are multiplexed for broadcast and so differ from analogue radio (FM or AM) broadcasting where a single encoded signal is broadcast on an analogue frequency. A multiplex compresses and bundles a number of radio services (and service information) into one frequency and transmits it digitally. The frequency is then decoded by either a domestic or an in-vehicle digital radio receiver. This technique (multiplexing) allows radio broadcasters to use the spectrum allocated to radio more efficiently, giving consumers more choice when listening to digital radio.

- 2.2. Radio multiplex services are provided and licensed in terms of national, local (typically county-wide) and small scale (typically sub-county) geographic coverage. A radio multiplex licence holder is responsible for arranging the transmission of services (i.e. radio stations) and for contracting with radio stations that want carriage on the network.
- 2.3. There are currently two UK national commercial digital radio multiplexes with 22 digital radio stations broadcasting on each network. The D1 multiplex is operated by Digital One Ltd (owned by Arqiva) and the licence for this network was first issued in November 1999. The second licence is held by Sound Digital Ltd (a consortium of Bauer, Wireless Radio and Arqiva) and was issued in February 2016. These two national multiplexes (networks) are an essential means of distributing national commercial radio stations and programming to audiences across the UK. They have been successful in opening the national airwaves to more national commercial radio services and in allowing commercial radio to compete with the BBC.
- 2.4. The general view from the UK radio industry, as summarised in the recent Digital Radio and Audio Review Report², is that digital radio listening will continue to increase and that terrestrial free to air digital/DAB radio will continue to be a significant platform for distributing radio services and content to consumers for the foreseeable future. The DAB digital radio platform also supports certain key public policy outcomes: enabling the reach of public service broadcasting to audiences and the efficient use of available radio spectrum to broadcast more stations, which provides listeners with more choice of content and caters to a wider range of consumer tastes.
- 2.5. The licensing system for national (and local) commercial digital radio multiplex services is set out in Part II of the 1996 Act. Section 58(1) requires that a radio multiplex licence issued by Ofcom is granted for a 12-year period. Section 58(2) of the Act allowed for one renewal of a radio multiplex licence if the licence was originally granted within 10 years of the 1996 Act's commencement³. This was for a period of 12 years if the licence was granted within six years of the 1996 Act or for eight years if issued between six and 10 years of the legislation's commencement.
- 2.6. The national radio multiplex licence currently held by Digital One Limited (D1) was first issued by the Radio Authority in November 1999 and was granted with the possibility of one renewal of 12 years as it was issued within six years of the 1996 Act's commencement. The D1 licence was renewed by Ofcom in 2011 and runs to November 2023. The second national commercial radio multiplex licence, currently held by Sound Digital Limited (SDL) commenced in February 2016 and will expire in February 2028. The SDL

² DCMS - Digital Radio and Audio Review - October 2021 <https://www.gov.uk/government/publications/digital-radio-and-audio-review>

³ Section 58 of the Broadcasting Act was commenced on 1 October 1996 (SI 1996/2120 art. 4(1), Sch. 1 para. 1)

licence currently has no renewal option, since it was issued 18 years after the commencement of the 1996 Act.

- 2.7. Currently Ofcom has no power to renew these licences further and under the current statutory scheme would need to re-advertise the D1 licence currently held by Digital One Ltd for a 12 year period through an open competition were this Order not to be made.

Changes to the provisions on licence renewal

- 2.8. On 22 July 2021 the government launched a public consultation seeking views on the approach to the future licensing of the two UK national commercial radio multiplex licences expiring in 2023 and 2028 on the terrestrial digital radio (DAB) platform. The consultation ran for 8 weeks and closed on 14 September 2021. Respondents were asked to provide their views on the options below:
- Option 1: **Do nothing** - not to legislate, but instead to allow licences to expire and be re-advertised by Ofcom in accordance with the existing legislation;
 - Option 2: Allow a **12-year renewal** for the licence held by Digital One Ltd and a **7 year renewal** for the licence held by Sound Digital Ltd, to align both expiry dates to December 2035;
 - Option 3: Allow a shorter **7 year renewal** for the licence held by Digital One Ltd and **2 year renewal** for the licence held by Sound Digital Ltd to align both expiry dates to December 2030.
- 2.9. The government did not state a preferred option. In addition, respondents were also asked for their views on whether Ofcom should have the power to require a higher level of coverage for the national multiplex licences, either as a condition of renewal or in relation to a future switchover or if it should, as now, be left to market forces; and on whether there should be restraints on future price increases for carriage fees charged by the multiplex operators and who they should cover.
- 2.10. The consultation received 10 responses in total from a range of stakeholders including existing radio multiplex operators, large commercial radio broadcasters and small commercial radio operators including broadcasters of national Asian stations. The number and source of responses reflects that interest in this area is generally limited to a small number of industry stakeholders with a technical understanding and who are most directly impacted by the licensing process. The views of all the stakeholders have been taken into account in developing the Government's approach.
- 2.11. The majority of respondents supported legislating to allow for an automatic renewal of the licences, arguing that this would provide commercial radio broadcasters with certainty and stability for their businesses and the confidence to continue to invest in digital services. These respondents

maintained that re-advertising the two licences would be too disruptive, costly and involve significant management resources being diverted to the application process at a time when commercial radio is dealing with significant business challenges due to the detrimental economic impacts of the Covid-19 pandemic on advertising and sponsorship revenues; and given the historic lack of interest in operating digital radio multiplexes, the effort involved in this process could result in no change with little benefit to commercial radio operators and listeners.

- 2.12. Some respondents cited the high barriers to entry - due to spectrum constraints and the necessity to either use Arqiva's existing nationwide transmission network or build an entirely new national digital radio network to meet coverage requirements - as key factors why there has been little interest in operating a national radio multiplex and no viable applicants from outside the radio industry. Both routes to market would involve considerable financial costs and delivery risks for a potential new bidder. Respondents were also concerned that a broadcaster operating a national multiplex would favour their own stations and shut out multiplex capacity to other broadcasters. Smaller radio broadcasters that have carriage on the national multiplexes (including Asian stations) said very clearly that they preferred a continuation of the current arrangement with a neutral non-radio organisation that has no conflicts of interest as the multiplex operator.
- 2.13. In terms of duration, the majority of respondents were strongly supportive of a longer renewal for both licences: 12 years for the D1 licence and 7 years for the SDL (D2) licence to a common 2035 end date. They argued that, even with changes to listeners' audio consumption habits, free to air digital (DAB) radio will remain the most important platform for listeners to access radio services and content into the late 2030s. A commitment to a longer term renewal has the significant advantage of providing national commercial radio broadcasters with certainty and stability about the future of these national digital radio networks and this in turn would give broadcasters the confidence to continue to invest in their digital services, thereby benefiting listeners.
- 2.14. None of the consultation respondents - either those in favour or those against automatic licence renewals - supported a shorter renewal of the licences (7 years for the D1 licence and 2 years for SDL licence) to a common end date of December 2030 (aligning with the expiry of local commercial DAB multiplex licences). Respondents could see no advantage in reorganising radio spectrum for the national networks and 56 local commercial DAB multiplexes at the same time. They also thought a wholesale change would be unnecessarily disruptive for both commercial radio operators and listeners, and difficult for Ofcom to carry out.
- 2.15. A small minority of the consultation respondents favoured the do nothing option and for Ofcom to re-advertise national radio multiplex licences in an open competition. They argued a competitive process could result in benefits such as more affordable carriage fees for stations on the networks, more

stations gaining access to the networks, technological innovation and possible improvements to coverage; even if a competitive process were won by the incumbent licensees. They also argued that without a competitive bidding process there would be little incentive for the existing multiplex operators to attract new stations, improve network coverage or innovate the transmission technology.

2.16. The list of consultees is:

- Arqiva
- Bauer
- Global
- Like Media Group
- Nation Broadcasting
- Panjab Radio
- Sunrise Radio
- United Christian Broadcasters (UCB)
- UK DAB Networks
- Wireless Radio

2.17. A more detailed analysis of the consultation outcome is available on the gov.uk website.

2.18. Having carefully considered the consultation responses it is the government's view that the process of an open competition is not in the best interests of the commercial radio sector or consumers at this time, particularly given the current challenges and uncertainty being faced in the context of the Covid-19 pandemic. Therefore the government intends to give Ofcom the power to renew the two national commercial radio multiplex licences and not to hold an open competition.

2.19. The Government proposes to make the draft Order using the power contained in section 1 of the 2006 Act. The draft Order amends section 58(2) of the 1996 Act to allow for the renewal (or further renewal) of national radio multiplex licences to 31 December 2035.

Relevant date

2.20. The draft Order amends section 58 to provide that an application for a renewal (or further renewal) (as provided by the draft Order) must not be made later than the relevant date.

2.21. Section 58(12) of the 1996 Act provides that the 'relevant date' is the date determined by Ofcom by which they would need to publish a notice to start a

competitive licensing process for the expiring licence. Subsections (12) and (12A) apply so as to enable Ofcom to set a timetable for renewing a licence which allows enough time to hold a competition for it if the licence is not renewed. There also needs to be enough time for a new licensee to establish their service when the old licence expires, to ensure continuity of service for listeners.

- 2.22. Given that one of the national radio multiplex licences is due to expire in November 2023, the existing requirement for Ofcom to give a year's notice of a relevant date would not allow a date to be determined which would be enough in advance of the expiry date. This Order therefore allows Ofcom to give less than a year's notice in this case.
- 2.23. The amendment will allow Ofcom to carry out an effective renewal process in relation to the D1 multiplex licence that expires in November 2023.

Power to remove or reduce burdens (section 1 of the 2006 Act)

- 2.24. Section 1 permits a Minister to make any provision which would serve the purpose of removing or reducing "any burden or the overall burdens, resulting directly or indirectly for any person from any legislation". The burdens identified - which have been quantified through a de minimis impact assessment - are the administrative inconvenience and financial cost to the current licensees in having to bid for new licences following the expiry of the licences that they hold at present. In addition, there would be significant burdens for Ofcom, the regulator, which would have to run the bidding process for the licences.
- 2.25. The draft Order makes provision to allow for the further renewal of both national commercial radio multiplex licences, thus avoiding the need for a competition for new licences. This provision will significantly reduce the likely financial costs for the affected licensees of having to re-compete for their licences. We anticipate that this measure will bring an annual net direct benefit to business of approximately £0.045m over the next 10 years.
- 2.26. The provisions in the draft Order will also avoid placing an administrative burden on the regulator, Ofcom. They would otherwise be required to conduct a competitive relicensing process for the two national radio multiplex licences.
- 2.27. We acknowledge that the current multiplex licence holders (and Ofcom) will need to incur some costs in applying for and processing renewals, but these costs will be significantly lower than the cost of re-advertising licences - indeed the cost is likely to be negligible.

3. Explanation why the conditions in section 3(2) of the 2006 Act are satisfied

The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

- 3.1. Section 58(1) of the Broadcasting Act 1996 allows for a radio multiplex licence to continue for a 12 year period. Section 58(2) of the 1996 Act allows for one renewal of a radio multiplex licence if the licence was first granted within 10 years of the Act's commencement, for a period of 12 years if granted within six years of the 1996 Act or for eight years if issued between six and 10 years of the legislation's commencement.. The D1 licence was renewed by Ofcom in 2011 and runs to November 2023. The second national commercial radio multiplex licence, currently held by Sound Digital Limited (SDL) commenced in 2016 and will expire in February 2028. The SDL licence currently has no renewal option since it was issued 18 years after the commencement of the 1996 legislation.
- 3.2. Ofcom, as a statutory body, can only act in accordance with their statutory powers. They cannot renew the licences further than they are permitted by legislation. Therefore, there is no non-legislative solution by which the intended outcome could be achieved - legislation is required to amend the 1996 Act to confer on Ofcom the power to renew licences.

The effect of the provision is proportionate to the policy objective

- 3.3. The policy objective is to provide clarity and long term certainty to the commercial radio sector about the national radio multiplexes. The Government believes that this policy objective is best achieved by allowing a renewal of the national commercial digital radio multiplex licences as provided for in the draft Order. The continuation of this arrangement will provide commercial radio with stability at a time of uncertainty in the industry and national broadcasters with the confidence to continue to invest in their digital services and support the further development of digital radio.
- 3.4. Free to air terrestrial digital (DAB) radio supports certain key policy outcomes such as enabling the reach of commercial radio broadcasting to audiences and the efficient use of available radio spectrum to broadcast more stations, which provides listeners with more choice of content and caters to a wider range of consumer tastes.
- 3.5. The two UK national commercial DAB radio multiplexes have underpinned investment by commercial broadcasters in widening the choice of national radio services available to consumers. As recently as 2013, there were only four national commercial radio services broadcasting via the Digital One network (SDL/D2 network launched in 2016). The two multiplexes now carry 45 national digital radio stations covering a wide range of formats and genres. An important consequence of the availability of the national commercial DAB platform has been to provide national commercial radio broadcasters with the ability to compete more effectively with BBC radio services.

The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it:

- 3.6. We believe that allowing the further renewal of national multiplex licences is in the public interest. It will enable national commercial broadcasters carried on the networks to continue to invest in new content and services for their listeners, as well as committing further resources towards their digital radio offers - underlining the Government's continued commitment to a listener-led transition to digital radio.
- 3.7. Renewal is also in the interests of listeners. Long term renewals of the radio multiplex licences will support existing channel line ups and maintain access to their favourite stations and the positive experience for audiences. In contrast, a competitive bidding process risks causing significant disruption to existing station line-ups on the multiplexes that could affect the listener experience and cause confusion and the migration of audiences to alternative digital options.
- 3.8. Re-advertising the licences has much more potential to be disruptive for the multiplex licensees by diverting investment and management time to the application process. A competitive bidding process could risk causing significant disruption to commercial radio. National commercial broadcasters would have to devote management resources to deal with the uncertainty that it could create as they would be forced to re-consider the distribution options for their national radio stations. It may have detrimental impacts on their businesses as advertisers and sponsors would potentially have to reassess their promotional strategies for reaching the audiences delivered by these national stations.
- 3.9. The only group potentially adversely affected by the draft Order are prospective new entrants who might in the future be interested in applying for expiring national radio multiplex licences who would in effect be prevented from acquiring such a licence through a competitive process. Some respondents to the consultation drew attention to the lack of interest in operating a national radio multiplex (there has also been little interest in operating local commercial radio multiplexes) in part due to the high barriers to entry.
- 3.10. There have been no market, technical or regulatory changes in recent years that would in our view make it more attractive for an external party to operate a national radio multiplex.
- 3.11. Barriers to entry are high due to spectrum constraints and the need to either use Arqiva's existing UK wide transmission network or build an entirely new national digital radio network to meet coverage requirements. Both of these routes to market would involve significant financial cost and delivery risks for a potential new entrant. In addition, national radio multiplex licences are let by Ofcom following a 'beauty contest' (there is no provision for cash bids) and a

new bidder would need to secure a more attractive line up of national radio services than the incumbent multiplex operators. Given all the above factors, our conclusion is that we would not expect any new entrants to the market if there was an open competition.

- 3.12. The Government therefore believes that the provisions in the draft Order strike a fair balance between the public interest and the interests of any person who might be adversely affected by them.

The provision does not remove any necessary protection

- 3.13. The provisions amended by the draft Order do not contain any necessary protections either for the industry or the public and therefore no protections are removed. Services provided under the licences renewed under these provisions must still comply with all other rules and requirements set by Ofcom including competition requirements and compliance with Ofcom's technical standards.

The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

- 3.14. The provisions amended by the draft Order do not confer any rights or freedoms, either for the industry or the public, and therefore the draft Order does not prevent any person from continuing to exercise any right or freedom.

The provision is not of constitutional significance

- 3.15. The provision is not of constitutional significance. The draft Order amends the regulatory framework for the licensing of national radio multiplexes which is not a matter of constitutional significance.

4. Other Ministerial duties under the 2006 Act

Consultation Summary

- 4.1. The consultation was published on 22 July 2021 and ran until 14 September 2021. Information about the consultation is available on the gov.uk website and the full text of the Government's response is set out at Annex A.

Parliamentary Procedure

- 4.2. The Minister of State for Media, Data and Digital Infrastructure, Julia Lopez MP, recommends that the affirmative resolution procedure should apply in relation to the making of the draft Order.

- 4.3. The draft Order makes relatively small and straightforward changes to the existing regulatory framework. However, the provision to be made by the draft Order will amend primary legislation and we therefore consider that the affirmative resolution procedure is the most appropriate procedure to ensure proper Parliamentary scrutiny.

European Convention on Human Rights

- 4.4. The Minister of State for Media, Data and Digital Infrastructure, Julia Lopez MP, has made the following statement regarding Human Rights: “In my view the provisions of the draft Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022 are compatible with the Convention rights.”

Territorial Extent and Territorial Application

- 4.5. Broadcasting is a reserved matter. The Broadcasting Act 1996, and the amendments made by the draft Order, apply to the whole of the United Kingdom.

5. Impact

- 5.1. The estimated financial impact on businesses is below £5m a year. As such, a full Impact Assessment has not been published alongside this Explanatory Document. Instead, an internal De Minimis Assessment was conducted and found that there was a small annual net direct benefit to business of approximately £0.045m over the next 10 years.
- 5.2. There is no impact on charities, voluntary bodies or the public sector. The changes do not, for example, impact on community radio stations licensed by Ofcom.

6. Contact

- 6.1. Alex Petrovic at the Department for Digital, Culture, Media & Sport can answer any queries regarding this instrument. Telephone: 07887 355672 or email: alex.petrovic@dcms.gov.uk

