

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

20th Report of Session 2019–21

**Draft Legislative Reform
(Renewal of Radio Licences)
Order 2020**

**Business and Planning Bill:
Government Response**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chair)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Haskel](#)

[Baroness Meacher](#)

[Lord Rowlands](#)

[Lord Thurlow](#)

[Lord Tope](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hlddelegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Twentieth Report

DRAFT LEGISLATIVE REFORM (RENEWAL OF RADIO LICENCES) ORDER 2020

1. This draft Legislative Reform Order (LRO) has been laid before Parliament by the Department for Digital, Culture, Media and Sport (DCMS), together with an Explanatory Document (ED). The draft Order is proposed to be made under section 1 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) which allows a Minister to make provisions by order to remove or reduce a burden, such as a financial cost or administrative inconvenience. According to DCMS, the purpose of the draft Order is to allow analogue commercial radio licences which are due to expire from 2022 to be renewed for a further ten-year period on the condition that the licensee also provides a service on a digital radio multiplex.¹

Background

2. DCMS sets the LRO in the context of the continuing move from analogue to digital radio, with digital radio currently accounting for close to 60% of all radio listening, up from less than 25% in 2010. The ED explains that analogue commercial radio licences have benefited from a series of licence renewals since the mid-1990s, most recently through another LRO in 2015.² DCMS says that the draft Order proposes a further licence renewal on the understanding that this will provide an incentive for stations to invest further in digital radio.
3. The Government launched a review of digital radio in February 2020 which will consider how radio should adapt to the challenges and opportunities from new audio technologies and new consumer behaviours, such as online streaming. The review will also consider the longevity of analogue radio whether and when there should be a switchover to digital. While the review will report by March 2021, DCMS emphasises that any future digital switchover is “likely to be some years away”, and that it is necessary therefore to deal with analogue radio licences now before they start to expire from 2022. The stations affected include Classic FM, Absolute Radio and TalkSport, as well as around 100 local licences. The Department says that under the current legislation, it is not possible to renew these licences further, so Ofcom, as the regulator, would have to conduct a competitive re-advertisement.

Proposed changes

4. The main proposal in the draft Order is to allow national and local analogue commercial radio licences to be renewed on a third occasion for a ten-year period; local licences that were granted on or after 8 April 2010 to be renewed on a second and third occasion for periods of five and ten years; and following renewal of a licence, the nomination of a small-scale radio multiplex service,

1 Digital radio multiplex is the means by which digital radio stations are broadcast: it consists of a number of stations bundled together to be transmitted digitally on a single frequency in a given geographic area.

2 Legislative Reform (Further Renewal of Radio Licences) Order 2015 ([SI 2015/2052](#)), see: DPRRC, [1st Report](#), Session 2015-16, HL Paper 8.

rather than a local service.³ The renewal would mean that licences will expire between 2032 and the mid-to-late 2040s, although DCMS expects that, in practice, analogue radio will reach a natural endpoint significantly earlier.

Tests in the 2006 Act

5. The Committee considered whether the proposals meet the statutory tests set out in the 2006 Act. It appears that the draft Order would remove or reduce a burden by generating considerable cost and administrative savings for both radio stations and Ofcom, as a competitive re-advertisement of national and licences would be avoided. With regard to the balance between the interest of businesses that may wish to enter the market, the interests of radio stations that would benefit from renewal of their current licences, and the interest of listeners, the costs of a competitive process could lead to radio stations having to divert investment away from developing their content and services, and the ED makes clear that there is limited interest in a competitive process: only one station operator expressed an interest in bidding for a national licence while no operator expressed an interest in the re-advertisement of local licences. In addition, commercial radio is under significant financial pressure as a result of the pandemic and a sharp drop in advertising revenues and businesses may enter the market via the digital or online routes or through the takeover of existing stations. During public consultation, a majority of respondents supported the proposals.

Parliamentary Procedure

6. DCMS has proposed that the LRO be subject to the affirmative resolution procedure.

Conclusion

7. **In the light of the information provided by the Department, we are satisfied that the Order meets the tests set out in the 2006 Act and is not otherwise inappropriate for the Legislative Reform Order procedure; and also that the affirmative resolution procedure proposed by the Government is appropriate.**

³ Radio multiplex licences are currently awarded either for national (UK-wide) or local (generally county-sized) coverage. A small-scale multiplex service would enable stations to broadcast to geographic areas smaller than those covered by existing local radio multiplexes.

BUSINESS AND PLANNING BILL: GOVERNMENT RESPONSE

We considered this Bill in our 17th Report of this Session.⁴ The Government have responded by way of a letter from the Rt Hon. Earl Howe, Deputy Leader of the House of Lords. The response is printed at Appendix 1.

4 [17th Report](#), Session 2019-21 (HL Paper 98).

APPENDIX 1: BUSINESS AND PLANNING BILL: GOVERNMENT RESPONSE

Letter from the Rt Hon. Earl Howe, Deputy Leader of the House of Lords, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

I am writing in response to the Delegated Powers and Regulatory Reform Committee's seventeenth report, which was on the Business and Planning Bill.

I appreciate the care the Committee have taken in scrutinising this Bill and I am grateful for their considered views and suggestions, particularly in light of the accelerated timeframe of the Bill's passage through Parliament.

I have reflected carefully on the views expressed by noble Lords as the Bill has progressed through Second Reading and Committee, as well as on the recommendations raised by the Committee. I hope this letter can alleviate the Committee's concerns.

Conditions for pavement licences – Clause 5(6)

We accept the Committee's recommendation that the power of the Secretary of State to publish national conditions in clause 5(6) should be contained in regulations subject to the negative procedure.

Guidance subject to no parliamentary procedure – Clauses 8, 16(2), 17(2) and 18(14)

We understand the Committee's concern that guidance issued under these powers should be subject to a Parliamentary procedure and would like to take the opportunity to explain why we have not made such provision and are not able to accept the Committee's recommendation on this point.

The Secretary of State's planning guidance plays a critical role in the Government's oversight of the planning system, including delivery of key government objectives through planning. Planning Practice Guidance, and the National Planning Policy Framework, are not subject to a Parliamentary procedure, although the National Planning Policy Framework has traditionally been laid before Parliament as a courtesy. This lack of prescribed procedure is a long standing position.

Clauses 16, 17 and 18 modify the Town and Country Planning Act 1990 ("the 1990 Act") by inserting new sections on a temporary basis. The guidance issued under those new sections will be part of the Planning Practice Guidance, published on the Gov.UK website. The Town and Country Planning Act 1990 already contains four specific powers for the Secretary of State to issue guidance. None of the existing powers are subject to Parliamentary procedure. This position is mirrored across the other Planning Acts.⁵ The powers to issue guidance in the 1990 Act were inserted by later Acts dating from 2007 to 2017. It would be odd for these new powers to issue guidance to be out of step with the existing powers in the 1990 Act given that it will all be published together.

The pavement licence clauses are a new set of provisions linked to and running parallel with Part 7A of the Highways Act 1980 ("the 1980 Act"). Similarly, the

⁵ See for example section 34 of the Planning and Compulsory Purchase Act 2004 and sections 37, 50, 55, 115, 221 and 223 of the Planning Act 2008.

1980 Act contains four powers for the Secretary of State to issue guidance, none of which are subject to Parliamentary procedure. Two of these powers were inserted by amending Acts in 2000 and 2015. Again, it would be odd for the power in clause 8 to be out of step with the powers to issue guidance in the 1980 Act upon which the provisions are based, and to be out of step with the powers to issue guidance in clauses 16 to 18.

Lastly, we would like to draw the Committee's attention to the fact that the draft guidance has been published⁶ so that it can be considered by Parliament alongside the Bill.

Extension of statutory provisions – Clauses 10(2), 11(14), 16(7), 17(7), 18(7), 19(3) and 21(3)

We accept the Committee's recommendation to add a condition to clauses 10(2), 11(14), 16(7), 17(7), 18(7), 19(3) and 21(3) (which contain powers to extend the duration of the temporary measures) to limit the use of these powers so they can only be exercised where an extension is required to deal with the effects of COVID-19.

Once again, I would like to thank the Committee for their thorough and careful scrutiny of the powers in this Bill. We have listened carefully and are taking steps as outlined above to ensure the powers in this Bill are proportionate and necessary.

Supplementary memorandum

The Government tabled amendments to the Business and Planning Bill for Report Stage in the House of Lords. These amendments include an amendment to existing delegated powers. A supplementary memorandum has been provided explaining why these powers have been taken and the reason for the procedure selected.

15 July 2020

⁶ Ministry of Housing, Communities & Local Government, 'Planning guidance to accompany the Business and Planning Act 2020' (22 July 2020): <https://www.gov.uk/government/collections/draft-planning-guidance-to-support-the-business-and-planning-bill>.

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 22 July 2020 Members declared no interests.

Attendance

The meeting was attended by Baroness Andrews, Lord Blencathra, Baroness Browning, Lord Goddard of Stockport, Lord Haslehurst, Lord Haskel, Baroness Meacher, Lord Rowlands, Lord Thurlow and Lord Tope.