



House of Commons
Regulatory Reform Committee

Draft Legislative Reform (Renewal of Radio Licences) Order 2020

First Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 22 July 2020*

The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

Current membership

- [Stephen McPartland MP](#) (*Conservative, Stevenage*) (Chair)
- [Chris Clarkson MP](#) (*Conservative, Heywood and Middleton*)
- [Jackie Doyle-Price MP](#) (*Conservative, Thurrock*)
- [Mark Eastwood MP](#) (*Conservative, Dewsbury*)
- [Julie Elliott MP](#) (*Labour, Sunderland Central*)
- [Mark Garnier MP](#) (*Conservative, Wyre Forest*)
- [Rt Hon Sir Oliver QC Heald](#) (*Conservative, North East Hertfordshire*)
- [Rt Hon Kevan Jones MP](#) (*Labour, North Durham*)
- [Anthony Mangnall MP](#) (*Conservative, Totnes*)
- [Conor McGinn MP](#) (*Labour, St Helens North*)
- [Gary Sambrook MP](#) (*Conservative, Birmingham, Northfield*)
- [Karl Turner MP](#) (*Labour, Kingston upon Hull East*)

Criteria against which the Committee considers each draft order laid under section 7 of the Localism Act 2011

Paragraph (3) of Standing Order No.142 requires us to consider any draft order laid under or by virtue of section 7 of the Localism Act against the following criteria: ... whether the draft order—

- (a) appears to make an inappropriate use of delegated legislation;
- (b) has an effect which is proportionate to the policy objective intended to be secured;
- (c) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (d) does not remove any necessary protection;
- (e) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (f) is not of constitutional significance;
- (g) has been the subject of, and takes appropriate account of, adequate consultation;
- (h) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1)1 of Standing Order No. 151 (Statutory Instruments (Joint Committee)) as are relevant.

Publications

Committee reports are published on the publications page of the [Committee's website](#) and in print by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/regrefcom.

Committee staff

The current staff of the Committee are Clementine Brown (Clerk) and Matt Eaton (Committee Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6352; the Committee's email address is regrefcom@parliament.uk.

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Introduction

1. The draft Legislative Reform (Renewal of Radio Licences) Order 2020 (the ‘draft Order’) and Explanatory Documents were laid before Parliament on 2 July 2020 by the Department of Digital, Culture, Media & Sport (the ‘Department’).
2. The purpose of the draft Order is to amend sections 103B, 104A and 104AA of the Broadcasting Act 1990 to allow analogue commercial radio licences which are due to expire from 2022 to be renewed for a further ten-year period. Local radio licences that were granted on or after 8 April 2010 would be renewable for a further five-year and ten-year period. Renewal is subject to the condition that the licensee also provides a service on an appropriate digital radio multiplex (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 geographic area).
3. The Department asserts in its Explanatory Document that the changes remove the burden of the administrative inconvenience and financial cost to current licensees in having to bid for new licences.
4. The Secretary of State has recommended that the draft Order be subject to the affirmative procedure.¹ The House of Lords Delegated Powers and Regulatory Reform Committee has concluded that this proposal is appropriate.

Description of the draft Order

5. Commercial radio licences are granted, renewed or terminated by Ofcom, the independent media and communications, regulator, according to the terms set out in the Broadcasting Act 1990 (the “1990 Act”).
6. The Digital Economy Act 2010 enabled national and local radio licences to be renewed for a period of up to seven years; and the Legislative Reform (Further Renewal of Radio Licences) Order 2015 enabled a further renewal period of up to five years for national licences and up to five years for local licences granted before 8 April 2010. The Department state that rights to renewals were granted on the basis they would provide an incentive for those stations to invest in digital and support the long term digital switchover² and that this process has had success “with digital radio now accounting for close to 60% of all radio listening (up from less than 25% in 2010)”.³
7. In February 2020 the Government announced a review of digital radio, this review included consideration of the longevity of analogue broadcasting transmission. In the next decade several established radio stations will reach the final expiry of their analogue licences, and renewals under the current legislation are now used up.
8. The Government consulted on options to respond to the final expiry of these analogue licences, including renewal of licences for a five-year or eight-year period. The Department also consulted on a ‘do nothing’ option in which licences were allowed to expire and were re-advertised, with the existing legislation. Further consultation considered a ten-year renewal period and the removal of the requirement for stations to provide a service on digital as a condition of future analogue renewal.
9. The Department state, “the response to the proposal to remove the digital requirement was mixed”⁴ and with regard to an increased renewal period of ten years “the feedback was positive”.⁵
10. The draft Order therefore allows analogue commercial radio licences which are due to expire from 2022 to be renewed for a further ten-year period. Local radio licences that were granted on or after 8 April 2010 would be renewable for a further five-year and ten-year period. Renewal remains subject to the condition that the licensee also provides a service on an appropriate digital radio multiplex.

2 Para 2.3 Draft LRO Explanatory Document

3 Para 2.3 Draft LRO Explanatory Document

4 Para 2.16 Draft LRO Explanatory Document

5 Para 2.16 Draft LRO Explanatory Document

Assessment of the draft Order

Role of the Regulatory Reform Committee

11. Our role is to assess whether the proposals meet the statutory conditions required of an order under the Legislative and Regulatory Reform Act 2006 (the “2006 Act”), and to examine the proposals against a number of tests. Standing Order No.141 sets out the criteria under which the Committee makes that assessment. In this section we assess the draft Order against those criteria.

Assessment against criteria

A: Appears to make an inappropriate use of delegated legislation

12. The Committee discussed the purpose of the draft Order with Department Officials and was satisfied that the draft Order does not make an inappropriate use of delegated legislation.

13. There is nothing highly controversial in the proposals.

14. **We agree the draft Order does not make an inappropriate use of delegated legislation and therefore does not raise any issues in respect of this test.**

B: Serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft order under section 1 of the Act)

15. A burden is defined in s1(3) of the 2006 Act as any of the following: a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

16. The Department has identified the following administrative burdens (through a de minimis impact assessment) which the draft Order removes or reduces:⁶

- a) For current licensees, “the administrative inconvenience and financial cost to current licensees in having to bid for new licences following the expiry of the licences that they currently hold; and, when applying for renewals of local licences, being limited to nominating a local radio multiplex radio service (or making a national nomination)”;⁷ and
- b) The Department notes the draft Order will avoid placing “a significant administrative burden on the regulator, Ofcom. They would otherwise be required to conduct a competitive relicensing process for the three national and approximately 100 local licences, which has not been conducted on a similar scale since the 1990s, and which Ofcom is unlikely to be sufficiently resourced to undertake at present.”⁸

6 Para 2.21 Draft LRO Explanatory Document

7 Para 2.21 Draft LRO Explanatory Document

8 Para 2.23 Draft LRO Explanatory Document

17. **We agree that the draft Order would reduce a burden.**

C: Serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft order under section 2 of the Act)

18. **The draft Order does not raise any issues in respect of this test.**

D: Secures a policy objective which could not be satisfactorily secured by non-legislative means

19. The Department states that amending the 1990 Act is necessary as:

“Ofcom, as a statutory body, can only act in accordance with their statutory powers. They cannot renew licences further than they are permitted by these provisions, and nor can they accept a nomination of a small-scale radio multiplex service. Therefore, there is no non-legislative solution by which the intended outcome could be achieved—legislation is required to amend the 1990 Act to confer on Ofcom the power to further renew licences and to allow applicants to nominate a small-scale radio multiplex service.”⁹

20. **We conclude that this requirement has been satisfied.**

E: Has an effect which is proportionate to the policy objective

21. The Government’s over-arching policy objective is to secure “is to provide analogue commercial radio stations which also broadcast over digital with the stability and certainty to allow them to continue to invest in the progression of the industry towards a digital future.”¹⁰

22. It goes on to state:

“Having taken full account of the consultation responses, we believe a further renewal period of ten years and allowing for the nomination of a small-scale radio multiplex (while retaining the digital carriage requirement) is the most proportionate response to meeting our policy objective. It provides the stability and certainty that a shorter renewal would not, while reflecting the likelihood that ten more years of analogue broadcasting will take the industry towards a natural endpoint for the medium (noting that section 97A of the Broadcasting Act 1990 already gives Ministers the power to require Ofcom to shorten licences to facilitate a future radio switchover with a minimum of two years’ notice).”¹¹

23. **We agree that the effect is proportionate to the policy objective.**

9 Para 3.2 Draft LRO Explanatory Document

10 Para 3.3 Draft LRO Explanatory Document

11 Para 3.10 Draft LRO Explanatory Document

F: Strikes a fair balance between the public interest and the interests of any person adversely affected by it

24. The Department argues that the proposed change “is in the interests of listeners, who will benefit from the continued growth in, and accessibility of, digital radio services”. It goes on to state that re-advertising licences “is likely to be detrimental to both licensees and listeners, by diverting investment and management time from programming and digital service development to the application process” and “could result in a reduction in the number of stations available to listeners.”

25. The Department states that further renewal “will enable licensees 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.”

26. It acknowledges that new entrants who might be interested in applying for expiring analogue radio licences are potentially adversely affected and accepts that the draft Order removes an option for potential new entrants to the market. However, the Department states, “there are a number of alternative routes to an audience, including digital and / or online broadcasting, while it is also potentially open to new entrants to acquire licenses from existing licence holders. As such, we consider that the benefits of re-advertising are small and outweighed by the costs of a cross-industry process to the wider sector and to listeners.”¹²

27. The Committee discussed the balance between the public interest and the interests of any person adversely affected by the draft Order. The Committee questioned the Department as to why a Competition Impact Assessment was not commissioned to investigate the strength of the concerns raised on consultation as mentioned in the Explanatory Document. The Committee noted that in accordance with current guidance from the Department for Business, Energy and Industrial Strategy, the Department carried out a de minimis impact assessment, in which the issue of competition was addressed. This was done in line with the Competition and Market Authority’s ‘competition assessment checklist’ as referred to in the BEIS guidance. It was concluded, in accordance with this assessment, that a separate Competition Impact Assessment was not required. The Committee were satisfied with this response.

28. The Committee considered what information is available as to potential new entrants to the market that would be unable to have the opportunity to apply for one of the relevant radio licences. The Department noted that only one station operator expressed an interest in bidding for a national licence, while no operator expressed any desire for large scale readvertisement of local licences.

29. There were no representations from non-licensees expressing an interest in securing a national or local analogue commercial radio licence. Further the Department noted that other avenues are open to new entrants: either through acquisition of existing stations or groups or by establishing services on national or local DAB multiplexes.

30. We agree that this requirement is satisfied.

G: Does not remove any necessary protection

31. The Department states that “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.”¹³

32. **We conclude that the draft Order does not remove any necessary protections.**

H: Does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

33. No right or freedom is directly affected by the provisions.

34. **We agree the draft Order does not raise any issues in respect of this test.**

I: Is not of constitutional significance

35. The Department states “The provision is not of constitutional significance. The draft Order amends the regulatory framework for the licensing of analogue radio stations which is not a matter of constitutional significance.”¹⁴

36. The Committee considered the issue of constitutional significance carefully. The Committee considered the reasoning for the 5-year analogue licence renewal through a Legislative Reform Order in 2015. Following discussion with Departmental Officials, the Committee agreed that the proposals are not of constitutional significance.

37. **The Department confirms that the proposals are not of constitutional significance and we agree.**

J: Makes the law more accessible or more easily understood (in the case of provisions restating enactments)

38. **The draft Order does not raise any issues in respect of this test.**

K: Has been the subject of, and takes appropriate account of, adequate consultation

39. The Department carried out a formal consultation from 23 December 2019 to 21 February 2020, with two stakeholder seminars held on 11 February and 26 February 2020. All commercial radio broadcasters were invited, as were DAB multiplex operators.

40. Following the impact of Covid-19 the Department consulted further, it states:

“In light of the difficulties presented to the sector by Covid-19, following the initial consultation period, we sought the views of key stakeholders and Ofcom on the following additional proposals:

13 Para 3.21 Draft LRO Explanatory Document

14 Para 3.23 Draft LRO Explanatory Document

- i) To remove the requirement for stations to provide a service on digital as a condition of any future analogue renewal (“the digital requirement”), including those renewals to which a station is already entitled under the existing legislation;
- ii) To allow all analogue licences to be renewed for a further ten years, in addition to any renewals to which stations may already be entitled.”

41. It goes on to state:

“Given the strong support expressed for a longer renewal period, the lukewarm response to the proposal to remove the digital requirement, and the broad view that any digital condition for renewal should be satisfied if a station takes carriage on a small-scale multiplex (once these are available), the government therefore proposes, within our Legislative Reform Order, to allow a further extension of all analogue licences for ten years on the basis that the licensee also provides a digital (national, local or small-scale) service.”¹⁵

42. **We conclude that the draft Order has been subject to adequate consultation.**

L: Gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No. 151 (Statutory Instruments (Joint Committee)) as are relevant

43. **The draft Order does not raise any issues in respect of this test.**

M: Appears to be incompatible with any obligation resulting from membership of the European Union.

44. **The draft Order does not raise any issues in respect of this test.**

45. ***We conclude that the draft Order meets the required preconditions and tests.***

Conclusion

46. *We conclude that a satisfactory case has been made in favour of the proposal and recommend that the draft Order be approved using the affirmative resolution procedure.*

Formal minutes

Wednesday 22 July 2020

Members present

Stephen McPartland, in the Chair

Chris Clarkson	Sir Oliver Heald
Jackie Doyle-Price	Kevan Jones
Mark Eastwood	Anthony Mangnall
Mark Garnier	Gary Sambrook

Draft Report (*Draft Legislative Reform (Renewal of Radio Licences) Order 2020*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 46 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till a date and time to be fixed by the Chair

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

First Report	The draft Legislative Reform (Renewal of Radio Licences) Order 2020	HC 632
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