



House of Commons
Business, Energy and Industrial
Strategy Committee

Draft Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022

Tenth Report of Session 2021–22

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

*Ordered by the House of Commons
to be printed 15 March 2022*

Business, Energy and Industrial Strategy Committee

The Business, Energy and Industrial Strategy Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Business, Energy and Industrial Strategy.

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Publication

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Committee staff

The current staff of the Committee are Zereena Arshad (Committee Specialist), Matthew Chappell (Committee Operations Manager), Dr Rebecca Davies (Clerk), Catherine Kisanji (Committee Specialist), Catherine Meredith (Second Clerk), Owen Sheppard (Media Officer), Lily Stoker (Committee Specialist), Tim West (Senior Media Officer), Louise Whitley (Senior Committee Specialist), Beatrice Woods (Committee Operations Officer) and Sue Wrightman (Committee Operations Officer).

Contacts

All correspondence should be addressed to the Clerk of the Business, Energy and Industrial Strategy Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 8586; the Committee's email address is beiscom@parliament.uk.

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Introduction

1. The draft Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022 (the ‘draft Order’) and Explanatory Documents were laid before Parliament on 31 January 2022 by the Department of Digital, Culture, Media & Sport (the ‘Department’).
2. The purpose of the draft Order is to amend section 58 of the Broadcasting Act 1996, to allow the two existing national radio multiplex licences to be renewed until 31 December 2035. Neither licence can be renewed under the law as it stands. Both must be re-advertised and awarded through open competition under sections 46 and 47 of the 1996 Act, which require applications to be published (and to include proposals as to the services to be provided and for enabling people in the coverage area to acquire the necessary receiving equipment) and allow representations to be made in respect of the applications. This process would have to take place even if only the incumbent licensees applied. It is avoided if both licences are renewed without competition.
3. The draft Order also amends the provisions that govern the determination of the deadline for a renewal application, so that there is sufficient time for an effective renewal process to be carried out before the first licence expires in November 2023.
4. In paragraphs 2.24 to 2.27 of its Explanatory Document the Department explained that the amendments in this draft Order remove the burden of the administrative inconvenience and reduce the burden of the financial cost to current licensees in having to bid for new licences, as well as the administrative burden on Ofcom, the regulator, of having to run the bidding process. The Government noted that the costs of applying for, and processing renewal of the licences (instead of competitive bidding) are, by contrast, likely to be negligible.¹
5. The Government proposes to make the draft Order using the power contained in section 1 of the Legislative and Regulatory Reform Act 2006.
6. Julia Lopez, the Minister of State for Media, Data and Digital Infrastructure has recommended that the draft Order be subject to the affirmative procedure.² The House of Lords Delegated Powers and Regulatory Reform Committee considered the proposal on Tuesday 2 March 2022 and has concluded that this proposal is appropriate.³

1 Paras 2.24 to 2.27 Draft LRO Explanatory Document

2 Para 4.2 Draft LRO Explanatory Document

3 Delegated Powers and Regulatory Reform Committee, 21st Report of Session 2021–22, [HL Paper 168](#)

1 Description of the draft Order

7. Under section 58 as originally enacted, a 12-year radio multiplex licence granted between 1 October 1996 and 30 September 2002 could be renewed once for a period of 12 years. The Communications Act 2003 extended the option to renew so that licences granted before 1 October 2006 could be renewed for a period of either eight years (for a licence granted before 1 October 2002) or 12 years (for any other licence).

8. The Digital Economy Act 2010 conferred a temporary power on the Secretary of State to amend section 58 and make further provision about the circumstances in which, and the period for which, Ofcom could renew radio multiplex licences. That power expired in 2015; it was never used in relation to national radio multiplex licences.⁴

9. Two national radio multiplex licences have been awarded under the 1996 Act. The first was granted in November 1999 for 12 years and renewed for a further 12 years in November 2011; it expires in November 2023. The second was granted in February 2016 for 12 years and renewed for a further 12 years in February 2028. Renewal to December 2035 would allow the first licence to be held for 36 years and the second for 19 years.

10. 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, including renewal of licences for a 12-year or 7-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.⁵

11. The Department stated that the “majority of respondents supported legislating to allow for an automatic renewal of licences, arguing that this would provide commercial radio broadcasters with certainty and stability for their businesses and the confidence to invest in digital services”.⁶

4 See [SI 2015/904](#) The Broadcasting Act 1996 (Renewal of Local Radio Multiplex Licences) Regulations 2015

5 Para 2.8 Draft LRO Explanatory Document

6 Para 2.11 Draft LRO Explanatory Document

2 Assessment of the draft Order

Role of the Business, Energy and Industrial Strategy Select Committee

12. The Regulatory Reform Committee was disbanded by the Government on 20 May 2021. Its remit for scrutinising regulatory and legislative reform orders (LROs) has been transferred to the Business, Energy and Industrial Strategy Committee under Standing Order No. 141.⁷

13. The Committee's function 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. We set out our assessment of the draft Order against those criteria below.

Assessment against criteria

A: Appears to make an inappropriate use of delegated legislation

14. We considered the purpose of the draft Order with Department Officials and were satisfied that the draft Order does not make inappropriate use of delegated legislation.

15. There is nothing highly controversial in the proposals.

16. **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)

17. 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.

18. The Department has identified the following administrative burdens (through a de minimis impact assessment) which the order removes or reduces:⁸

- a) For current licensees "the administrative inconvenience and financial cost in having to bid for new licences following the expiry of the licences that they hold at present",⁹ and;

7 [Standing Order No. 141](#), House of Commons Standing Orders. S.O. No.141 sets out the work of the Committee and its powers. Its primary role under S.O. No.141 is to judge LROs against a set of tests, and to come to a decision on whether or not an LRO has met those tests and whether or not it should be approved by the House. It also gives the Committee the power to consider "matters relating to regulatory reform". In the past, the Committee has used this power to conduct inquiries into regulatory policy. S.O. No.142 sets out the Committees scrutiny powers in relation to draft Orders under the Localism Act. [Scrutiny of Localism Orders is very similar to scrutiny of LROs.]

8 Para 2.24 Draft LRO Explanatory Document

9 Ibid

- b) The Department notes the Order would avoid placing “a significant burden on the regulator, Ofcom “which would have to run the bidding process for the licences”.¹⁰

19. **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)

20. **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

21. The Department stated that amending the Broadcasting Act 1996 is necessary because:

Ofcom, as a statutory body, can only act in accordance with their statutory powers. They cannot renew 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 further renew licences.¹¹

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

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

23. The Government stated that:

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.¹²

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

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

25. The Department asserted that the proposed renewal “is 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.

10 Para 2.26 Draft LRO Explanatory Document

11 Para 3.2 Draft LRO Explanatory Document

12 Para 3.3 Draft LRO Explanatory Document

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”.¹³

26. The Department stated that “re-advertising the licenses has much more potential to be disruptive for the multiplex licences by diverting investment and management time to the application process. A competitive bidding process could risk causing significant disruption to commercial radio”.¹⁴

27. It acknowledged that new entrants who might in the future be interested in applying for expiring national radio multiplex licences are potentially adversely affected and accepts that the draft Order removes an option for potential new entrants to the market. However, the Department referred to its consultation which “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”.¹⁵

28. We questioned the Department why it concluded that it would not expect any new entrants to the market, given at least one consultee indicated that it would be interested in bidding. In its response, the Department re-iterated that “historically there had been a very low level of interest from external parties bidding for either the national or local commercial digital (DAB) radio multiplex licences. The licence to operate a second national commercial radio multiplex (known as D2) was originally awarded to the 4 Digital Group consortium led by Channel 4 in 2007 but the licensee was unable to develop a viable service and handed back the licence to Ofcom in 2008”.¹⁶

29. The Department explained that “when the D2 multiplex licence was advertised by Ofcom for a second time in 2014, it was only after allowing an extended period for interested parties to consider putting forward an offer that two bids were received from separate consortia. In the event, all of the participants in both of the consortia concerned were from existing commercial radio operators. There was no interest from non-radio organisations wanting to enter the market”.¹⁷

30. The Department noted that there have been no market, technical or regulatory changes in recent years that would make it more attractive for an external party to operate a national radio multiplex. It also noted that whilst broadcast radio is likely to continue until the early 2040s, its future after that is less certain as internet connectivity, networks and audio receiver devices continue to improve.

31. The Department further noted that “the barriers to entry to operate a national radio multiplex for any new bidder are high because of the need to either use Arqiva’s existing range of high transmitter masts or build an entirely new national digital radio network to meet coverage requirements. Both of these routes to market for a new would involve significant financial costs and delivery risks for a potential new bidder given that digital radio is now a mature technology”.¹⁸

13 Para 3.7 Draft LRO Explanatory Document

14 Para 3.8 Draft LRO Explanatory Document

15 Para 3.9 Draft LRO Explanatory Document

16 Additional information from DCMS, supplied to the Business, Energy and Industrial Strategy Committee

17 Ibid

18 Ibid

32. We asked the Department why a Competition Impact Assessment was not commissioned to investigate the effect of the policy, especially having regard to the suggestion made at paragraph 16 of the Consultation Response that “maintaining the position of the current D1 licence holder would be detrimental for the sector in the long run” the assertion at paragraph 27 that consultees provided insufficient evidence in support of the argument that “competition for national licences is a good thing”,¹⁹ and experience of competition in relation to local radio multiplexes.²⁰

33. We noted that, in accordance with Better Regulation Executive guidelines, the Department carried out a de minimis impact assessment, in which the issue of competition was addressed. The Committee was satisfied with this response.

34. We questioned the Department whether any consideration has been given to lowering the barriers to entry identified in the Explanatory Document and to ways to increase interest in operating national radio multiplexes. The Department responded that “the hurdles for any new multiplex applicant are extremely high given the statutory criteria for awarding the licence: principally to meet the extent of coverage requirements, the ability to establish and maintain important national radio services throughout the licence period and the requirement to carry stations on the network that appeal to a variety of tastes and interests. The Department added that it did not believe that relaxing the criteria would be in the best interests of listeners: with a potential loss in coverage in some areas and/or a lack of choice of national stations carried on a network”.²¹

35. The Department noted that separately, “the Government has consulted on proposals for deregulation of commercial radio which would simplify commercial radio regulation and reduce costs and burdens for the sector whilst strengthening the protections for the provision of local news. The government hopes to be able to bring forward specific legislation as soon as parliamentary time allows”.²²

36. The Committee questioned the Department whether it is committed to ensuring open competition when the licences expire in December 2035. The Department referred to the Digital Radio and Audio Review,²³ published in 2021, which considered the issue of future radio distribution and coverage. The Department stated that “the Review concluded that, based on current trends, a transition from FM to digital (DAB and IP) will not be possible before 2030, but the radio industry should start to make plans and preparations in terms of long-term investment on the basis of possible switch-off of analogue services at some point after 2030. The Department noted that the issue of how to appropriately organise the use of spectrum for national terrestrial digital radio broadcasting is something that can be considered by Ofcom, industry and government in the next digital radio and audio review, which is due to take place in 2026”.²⁴

37. **We agree that this requirement is satisfied.**

19 [Consultation on national commercial radio multiplex licences 2021](#), published 31 January 2022

20 Additional information from DCMS, supplied to the Business, Energy and Industrial Strategy Committee

21 Ibid

22 Ibid

23 [Digital radio and audio review, Policy paper](#), published 21 October 2021

24 Additional information from DCMS, supplied to the Business, Energy and Industrial Strategy Committee

G: Does not remove any necessary protection

38. The Department stated 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”.²⁵

39. **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

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

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

I: Is not of constitutional significance

42. The Department stated that “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”.²⁶

43. **The Department confirms that the proposals are not of constitutional significance. We agree.**

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

44. **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

45. The Department carried out a formal consultation on the draft Order between 22 July 2021 and 14 September 2021.²⁷

46. Respondents were asked to provide their views on the options below:

- i) **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;
- ii) **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;

25 Para 3.13 Draft LRO Explanatory Document

26 Para 3.15 Draft LRO Explanatory Document

27 Para 4.1 Draft LRO Explanatory Document and also see [Consultation outcome, Consultation on national commercial digital radio multiplex licences 2021](#)

- iii) **Option 3:** Allow a shorter 7-year renewal for the licence held by Digital One Ltd and a 2-year renewal for the licence held by Sound Digital Ltd to align both expiry dates to December 2030.²⁸

47. The Government concluded that:

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 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.²⁹

48. **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

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

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

28 Para 2.8 Draft LRO Explanatory Document

29 Para 2.18 Draft LRO Explanatory Document

Conclusion

51. *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

Tuesday 15 March 2022

Members present:

Darren Jones, in the Chair

Tonia Antoinazzi

Alan Brown

Richard Fuller

Ms Nusrat Ghani

Paul Howell

Mark Jenkinson

Andy McDonald

Charlotte Nichols

Mark Pawsey

Alexander Stafford

Draft Report (*Draft Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 51 read and agreed to.

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

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

[Adjourned till Tuesday 22 March at 9:45am]

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.

Session 2021–22

Number	Title	Reference
1st	Post-pandemic economic growth: Industrial policy in the UK	HC 385
2nd	Climate Assembly UK: where are we now?	HC 546
3rd	Post-pandemic economic growth: Levelling up	HC 566
4th	Liberty Steel and the future of the UK steel Industry	HC 821
5th	Pre-legislative scrutiny: draft Downstream Oil Resilience Bill	HC 820
6th	Pre-appointment hearing of the Government's preferred candidate for Chair of the Financial Reporting Council	HC 1079
7th	Decarbonising heat in homes	HC 1038
8th	Post Office and Horizon—Compensation: interim report	HC 1129
9th	Revised (Draft) National Policy Statement for Energy	HC 1151

Session 2019–21

Number	Title	Reference
1st	My BEIS inquiry: proposals from the public	HC 612
2nd	The impact of Coronavirus on businesses and workers: interim pre-Budget report	HC 1264
3rd	Net Zero and UN Climate Summits: Scrutiny of Preparations for COP26 – interim report	HC 1265
4th	Pre-appointment hearing with the Government's preferred candidate for the Chair of the Regulatory Policy Committee	HC 1271
5th	Uyghur forced labour in Xinjiang and UK value chains	HC 1272
6th	Mineworkers' Pension Scheme	HC 1346