

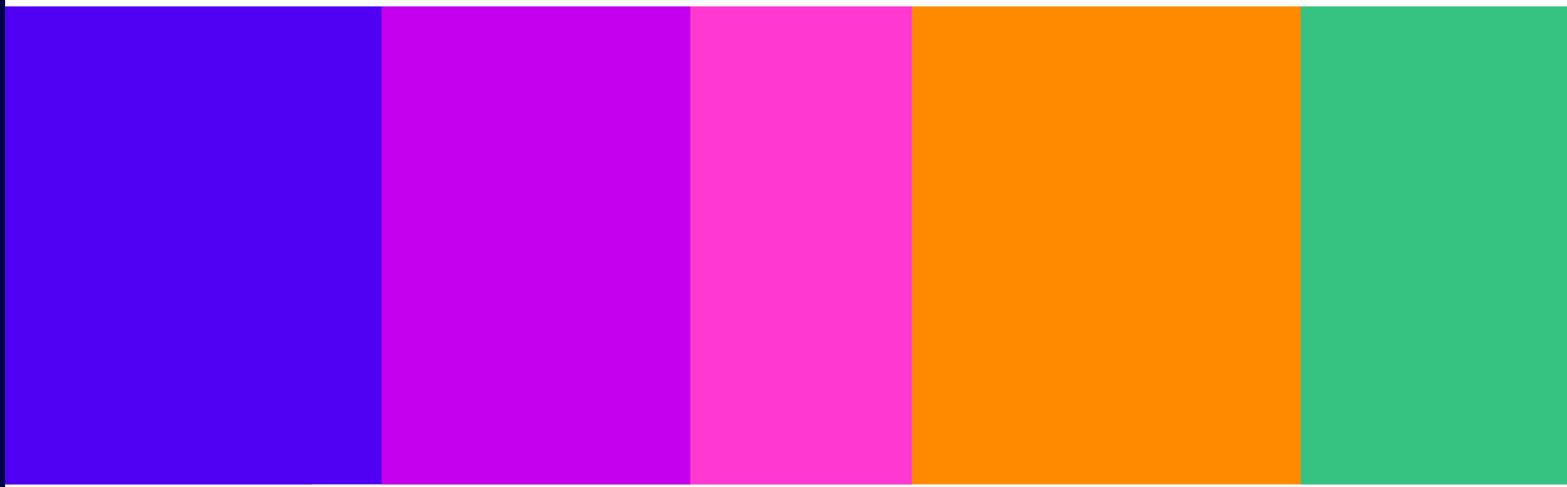
Community Radio: future approach to Key Commitments

Consultation on Ofcom's proposal to
streamline and simplify Key Commitments

Consultation

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1. Overview

- 1.1 Community radio services broadcasting on FM or AM (analogue) provide social gain and other community benefits on a not-for-profit basis.
- 1.2 Each station is required to provide the service described in its licence, which is based on the proposals it made during the application process for the licence. These service descriptions recorded in community radio licences are called 'Key Commitments'. This consultation seeks views on a proposal to streamline and simplify the Key Commitments for analogue community radio stations.

What we are proposing – in brief

We are proposing to vary community radio licences to provide stations with greater flexibility so they can focus on delivering social gain for their target communities. To do this we are proposing to remove specific quotas on:

- The types of programming to be broadcast, e.g. the main types of music and speech output.
 - The number of hours of original output broadcast each week.
 - The number of hours of locally-produced output broadcast each week.
 - The languages broadcast on the service.
- 1.3 The community radio sector is an important part of the UK radio landscape. Since the first full community radio licences were issued in 2005, the sector has steadily grown and now includes more than 300 analogue (AM / FM) services. Typically these services cover a small geographical area and are run on a not-for-profit basis.
 - 1.4 Each station provides a unique, community-focused service, secured by its core obligations of being not-for-profit and providing social gain. They can cater for whole communities or for different areas of interest – such as a particular ethnic group, age group or interest group. Each community radio licence includes Key Commitments, which set out the station's character of service and social gain requirements, as well as specific requirements and quotas relating to the nature of the broadcast service (including in relation to types of speech and music output, original and locally-produced output and any non-English language requirements).
 - 1.5 We believe that the current format of Key Commitments focuses too heavily on specific quotas, taking focus away from the character of service and social gain requirements. In our view, these are the fundamental aspects of community radio licences which ensure that listeners are best served by their local service. Feedback from community radio licensees has highlighted that overly prescriptive Key Commitments can divert resources from vital aspects of a service, and we want to ensure that licensees have the flexibility to best serve their community, while ensuring appropriate rules remain in place to protect the overarching character of service.
 - 1.6 We have also seen a noticeable increase in the number of complaints we have received about community radio stations' compliance with their Key Commitments in recent years. Many of these complaints focus on these specific quotas, and investigating them can require

significant resource on the part of both licensees and Ofcom. The current format of Key Commitments can also result in stations being found in breach of their Key Commitments even though they are delivering a good service for their target community.

- 1.7 We are mindful that Key Commitments for some stations currently include specific requirements for non-English languages. We are proposing to remove the specific language requirement section of the current Key Commitment format. However, where we consider that the languages listed are important to the overall character of service and are not specifically referenced in the character of service, we are proposing to safeguard this by adding a line to the character of service specifying that these languages will be broadcast on the station.
- 1.8 This proposed approach, if adopted, would (following the opportunity for individual licensees to make representations) apply to all existing community radio licences, and would apply to applications for community radio licences should any be advertised in future.

Next steps

- 1.9 We are now seeking views on our proposed new approach. Following the closing date of this consultation, we will evaluate the responses before deciding whether to adopt our proposed new streamlined approach to community radio Key Commitments. We shall then publish a statement on our decision.
- 1.10 If we decide to adopt our proposals, we will review each existing licence and propose variations in line with our proposals. Individual licensees will then be given a reasonable opportunity to make representations about the proposed variations before they are implemented, in accordance with section 86(5)(b) of the Broadcasting Act 1990.
- 1.11 The closing date for this consultation is Thursday 13 June 2024.
- 1.12 The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

2. Background

- 2.1 Ofcom awards analogue community radio licences, typically for services that cover a small geographical area. Services are run on a not-for-profit basis. They can cater for whole communities or for different areas of interest – such as a particular ethnic, age or interest group. The licences last for up to five years at a time but can be extended for further periods. There are many differences between individual community radio stations, and the sector is made up of many small stations, all in single ownership.

Statutory framework for the regulation of community radio

- 2.1 The statute that led to Ofcom’s decision to start allocating spectrum to community radio services is the Community Radio Order 2004 (the Order). This Order, which has been amended on two occasions, establishes the nature of a community radio service, and contains specific provisions that Ofcom has to implement in its licensing and regulatory regime. In particular, it sets out:
- The characteristics of community radio services, namely the reasons for their provision, attributes of the person providing the service, the presence of opportunities for the community to participate and accountability to the community served.
 - A definition of the ‘community’ a service is meant to serve: those people based in a geographical area or a community of interest.
 - A definition of the ‘social gain’ that services are expected to deliver: provision of broadcasting to underserved individuals, facilitation of discussion and expression of opinion, provision of education or training to those not employed by the person providing the service, and better understanding and links within the community. In addition, a range of other social objectives are listed which constitute social gain: delivery of services of a social nature, economic development, employment, work experience, social inclusion, cultural and linguistic diversity, civic participation and volunteering.
- 2.2 When granting community radio licences, Ofcom must also have regard to section 105 of the Broadcasting Act 1990 (the 1990 Act), as amended by the Communications Act 2003 and modified by the Order.
- 2.3 Section 105 of the 1990 Act sets out the matters which Ofcom must have regard to when evaluating community radio licence proposals and awarding licences, namely:
- The ability to maintain the service throughout the period of the proposed licence;
 - Catering for the tastes and interests of the relevant community;
 - Broadening choice and distinctiveness from overlapping services;
 - Evidence of demand or support;
 - Extent of social gain;
 - Accountability to the community; and

- Access and training in the use of facilities.
- 2.4 Finally, the Order specifies a requirement for Ofcom to consider the potential economic impact on commercial radio stations of licensing community radio services, restrictions on income from the sale of on-air advertising and sponsorship and ownership restrictions. The Government's Department for Culture, Media and Sport (DCMS) is considering responses made to its consultation¹, which closed on 31 January 2024, which focused on a number of issues relating to community radio legislation, including whether to remove the funding restrictions.
- 2.5 Ofcom awards community radio licences to ensure that community radio services deliver the statutory purposes set out in the Order. When Ofcom invites applications for community radio licences, applicants complete an application form with information about their proposed service, their business plan, experience, etc. Ofcom considers whether the application meets the statutory requirements described above and in the case of multiple applicants in a given geographical area, which applicant would best deliver the key purposes of community radio. Some of these statutory requirements only need to be considered by Ofcom when it makes licence award decisions, such as the requirement that applicant has the ability to maintain the service, or that there is evidence of demand or support. However, there are other statutory requirements that form part of the application and remain relevant during the full duration of community radio licences. These include requirements relating to social gain and the character of the service to be broadcast.
- 2.6 In order to ensure that these requirements are delivered by individual services they are written into successful applicants' community radio licences as Key Commitments. Section 106(a) of the 1990 Act also requires each licence to include conditions that appear to Ofcom to be appropriate for securing that the character of the licensed service (as proposed by the licence holder in its application) is maintained during the period of the licence.
- 2.7 In addition to forming part of licence applications and being relevant to the process of awarding licences for community radio, Key Commitments are also important for other aspects of the community radio licensing regime including:
- Compliance and enforcement: Ofcom has to ensure that licensees deliver their licensed services for the duration of their licence, and the Key Commitments enshrine what they have to deliver.
 - Decisions about community radio licence variations: there is a process that allows Key Commitments to be changed with Ofcom's consent, subject to statutory and policy criteria.
- 2.8 Community radio licences can currently be extended for a further period of up to five years on three occasions although, as set out above, DCMS is currently considering responses to its consultation, which included proposals to legislate for further extensions.
- 2.9 A more detailed legal framework is set out in Annex A1 below.

¹ [Consultation on analogue community radio licensing - GOV.UK \(www.gov.uk\)](https://www.gov.uk/consultation-on-analogue-community-radio-licensing)

Evolution of community radio Key Commitments

- 2.10 As explained above, the Key Commitments are used by Ofcom in making licence award decisions. Once a service is broadcasting, they are also used to ensure that stations continue to deliver a service that is consistent with the characteristics of community radio specified in legislation and in the application. The legislation allows Ofcom to approve changes to Key Commitments provided certain criteria are met.
- 2.11 Ofcom’s approach to Key Commitments has evolved over the nineteen years since we started licensing community radio services. During the first and second community radio licensing rounds, the Key Commitments which appeared in community licences were drafted by Ofcom based on the description of the planned service contained in the licence application.
- 2.12 This approach helped to ensure that licences included measurable obligations across all of the legislative characteristics of community radio services, while still being an accurate reflection of the service proposed in the application. However, the process was time-consuming, sometimes involving extensive post-licence award negotiations between Ofcom and the prospective licensee as to what the Key Commitments should include.
- 2.13 For the third round of licensing, Ofcom decided to adopt a different approach, whereby applicants drafted their own Key Commitments as part of their application. This approach mirrored that used in commercial radio licensing and local TV licensing, where applicants draft their own Format and Programming Commitments respectively. This approach improved the efficiency of the process by removing the need for the aforementioned, and often prolonged, post-licence award negotiation process.
- 2.14 In 2016 we decided, after consulting with stakeholders, to streamline and simplify the Key Commitments. Responses received to this consultation were generally supportive of our view that the community radio sector needed more flexibility and a lower administrative burden. We therefore altered our approach to Key Commitments so that the main purpose, primary function and activities, the target community, and the amount and type of programming output was retained but with less detail than before.
- 2.15 We also replaced self-written bespoke Key Commitments with a set of standardised requirements relating to how services are required to deliver social gain, accountability and participation.
- 2.16 We considered this approach met our objective of capturing the core elements of the character of service in each community radio licence in a way that reduced the administrative burden for both the licensee and Ofcom, and provided stations with greater flexibility to better serve their target communities and deliver valuable social gain.

Evolution of the community radio sector

- 2.17 The community radio sector is a vibrant and vital part of the UK radio landscape. Since the first community radio licences were issued in 2005, the sector has steadily grown, and now includes more than 300 analogue (AM / FM) stations.
- 2.18 To facilitate the roll-out of small-scale DAB multiplexes and new digital radio services, Ofcom has more recently prioritised licensing of these multiplexes and programme services carried on them since 2020.

- 2.19 There are now over 200 services licensed to broadcast over digital (DAB / DAB+) - in particular, via the small-scale DAB (SSDAB) multiplexes whose rollout across the UK is ongoing.
- 2.20 In 2021, Ofcom began issuing Community Digital Sound Programme (C-DSP) licences. These are for community radio stations wishing to broadcast on DAB digital radio. They were introduced with broadcast via new small-scale radio multiplex services in mind, although they also allow for broadcast on local radio multiplex services. These could be existing analogue community radio services wishing to make themselves available to local people on DAB digital radio as well as analogue, or new services wanting to broadcast on DAB only.
- 2.21 The Key Commitments in C-DSP licences focus principally on the provision of “social gain”, accountability to the target community, and the ability of members of that community to participate in the service.
- 2.22 The type of content to be broadcast on these services is captured in a description of the character of service, which includes: the target community; where the target community is located; and a description of the main purpose of the radio service, and its primary function or activities. This differs from traditional analogue community radio licences, where the amount and type of programming to be provided by each service was usually included.
- 2.23 The requirements for C-DSP licences were designed to be less restrictive than the requirements for analogue community radio licences, in part because they are not attached to the award of spectrum. However, the Key Commitments for C-DSP licences are designed to ensure that each service continues to meet the statutory criteria of a C-DSP licence and delivers a consistent character of service to its target community.
- 2.24 As noted above in paragraph 2.4, the UK Government is also examining other conditions relating to analogue community radio services and recently consulted on extending the licence period for these and whether restrictions on the amount of money community radio stations can raise from commercial sources remain appropriate.
- 2.25 The Government consultation recognises that existing restrictions may have limited the scope for community radio stations to grow and develop. In reviewing these restrictions, the Government is seeking to ensure that community radio has the freedom to develop its local services (while maintaining its core character, including the requirement to deliver social gain).
- 2.26 In the following section, we set out our current approach to the Key Commitments and its impact.

3. Current approach to Key Commitments

The current process of defining Key Commitments

- 3.1 As explained in Section 2 above, since the third round of community radio licensing, applicants have been required to propose the character of service they intended to provide. From 2016, this was based on standardised requirements set by Ofcom relating to how services should deliver social gain, accountability and participation. We took applicants' proposals into account when making licence award decisions and for successful applicants we wrote their character of service into their licence in the form of 'Key Commitments'. These Key Commitments set out conditions about the type of content which the service is required to broadcast and the social gain which it is required to deliver to its target community.
- 3.2 Once a station is broadcasting, these Key Commitments are also used to ensure that stations continue to deliver a service that is consistent with the characteristics specified in legislation and in the application. The legislation also allows Ofcom to approve changes to Key Commitments provided specified criteria are met.
- 3.3 As set out above, some Key Commitments are derived from the statutory regime, which defines what constitutes a community radio service by setting out characteristics that a community radio service should demonstrate, including that they:
- Serve a target community;
 - Provide social gain;
 - Invite participation;
 - Broaden listener choice; and
 - Cater for the tastes and interests of their target community.
- 3.4 In addition, to ensure that a service fulfils the statutory criteria of providing access and participation as well as providing locally produced output, Ofcom requires the studio to be based in the licensed coverage area.
- 3.5 Presently, each analogue community radio station's Key Commitments also include specific requirements and quotas relating to the amount and type of programming to be broadcast, (including the main types of music and speech output, the amount of original output, amount of locally-produced output and the languages in which the services will broadcast) although there is no statutory requirement for the inclusion of these conditions. This information varies significantly between analogue community radio services, placing a greater regulatory burden on some services. As noted above, some community radio stations also have Key Commitments relating to non-English language content.

The impact of our current approach to Key Commitments

- 3.6 The Key Commitments of analogue community radio licences set out the character of service which a station will deliver, and the elements of social gain which will be delivered by the Licensee, both on and off-air. They are meant to reflect the community benefits that will be delivered by a community radio station to its target community and are therefore an essential part of a community radio licence.
- 3.7 Our experience of regulating the community radio sector has suggested that Key Commitments that are quota-based or contain detailed and specific requirements about the type of programming to be broadcast, may not be the most effective way of ensuring that community radio licensees provide the best service to their respective target communities. Such Key Commitments do not guarantee quality of service and focusing on meeting them can inhibit licensees from making other changes to improve the delivery of their service.
- 3.8 Over recent years we have seen a significant increase in the number of complaints associated with community radio stations that appear to be breaching their Key Commitments, particularly in relation to original and locally produced output. Where we decide to open a formal investigation following such a complaint, licensees are required to provide us with relevant information and otherwise divert resources away from serving their target communities to help us carry out an investigation. Investigations can result in significant benefits for target communities by ensuring licensees are appropriately serving their target communities and deterring both a licensee under investigation, and licensees more generally, from breaching their licence in the future. However, where a breach relates to missing a specific quota (particularly a small breach of one quota on a specific day), the benefits of an investigation are likely to be more limited. This is particularly likely to be the case where a licensee is otherwise complying with its Key Commitments and providing significant social value to its target community.
- 3.9 In addition, overly prescriptive Key Commitments may divert what may be limited resources from vital aspects of a community radio service and reduce a licensee's flexibility to best deploy its resources to deliver social gain to target communities. This may mean a licensee does not have the resources to focus on the effective day-to-day running of the service. Or it may mean a licensee does not have the resources to adapt to best serve its target community and its approach may become outdated. If a licensee is concerned they cannot comply with their current quotas then it may also decide to apply to Ofcom to vary its Key Commitments which requires further resource. More generally, it may result in a licensee taking a 'box ticking' approach to compliance without a wider focus on providing social value to the target community.
- 3.10 Overall, undue focus on the quota-based Key Commitments can have negative effects for the use of resources by community radio licensees which may also adversely impact their target communities.
- 3.11 Specific quota-based Key Commitments can also impact on how we fulfil our regulatory functions relating to community radio, including in relation to compliance, enforcement and licence variation processes. For example, dealing with complaints associated with potential breaches of quota-based requirements and ensuring that stations continue to deliver a service that is consistent with such quota-based requirements can divert Ofcom's resources

away from ensuring that licensees are meeting their obligations regarding social gain more generally where we may consider the potential for consumer harm to be higher.

- 3.12 We may also receive more licence variation requests to change Key Commitments. Of the 36 Key Commitment change requests submitted between November 2022 and January 2024, 31 related exclusively to the elements of Key Commitments which we are proposing to remove.
- 3.13 Changes to the service at any point during the licence period can be accommodated because the statutory scheme gives Ofcom the power to vary a licensee's Key Commitments, normally having considered a request from a licensee. Clearly, the way in which a licensee's Key Commitments have been drafted can have an impact on whether, or how often, that licensee may seek to change them. In general, it can be said that the more detailed and 'time-bound' a Key Commitment is, the more likely it is that a licensee may wish to change it at some point.

The case for change

- 3.14 During engagement with licensees, through formal stakeholder meetings and other fora, a significant number of licensees have raised concerns with us about our approach to enforcement of Key Commitments, particularly around programming requirements. These concerns broadly highlight a desire for regulation to focus on the benefits these stations can deliver for their communities rather than strict measures of hours of content being delivered.
- 3.15 The most common reason cited for licensees not being able to meet aspects of their Key Commitments, particularly those aspects with quantitative requirements, is volunteer absence, particularly at short notice. Community radio services are, by their very nature, not-for-profit organisations, and many licensees rely heavily, or even exclusively, on volunteer input to deliver their services and meet their Key Commitments. Licensees have also made us aware of the increased challenges in recruiting and retaining volunteers following the Covid-19 pandemic and subsequent cost of living crisis, which have made it harder for some licensees to consistently meet their quota based Key Commitments. While it is important for licensees to have contingency plans in place to deal with volunteer absences, we feel it is appropriate for us to re-evaluate the quantitative aspects of Key Commitments in this context.
- 3.16 As explained in Section 2 above, while community radio services are among the smallest radio services licensed by Ofcom, they currently have a higher degree of regulation than much larger commercial radio services. Having regard to the core purpose of community radio services, which is to provide social gain to their communities, we want to ensure that the level of regulation placed on these services is appropriate and proportionate, having regard to the obligations in the legislation.
- 3.17 As noted in paragraph 2.22, new C-DSP services have lighter-touch Key Commitments, in line with our proposed new Key Commitment format for analogue community radio licensees. Therefore, making these changes will ensure consistency across the two licence types.
- 3.18 Noting these factors set out above, it is important to strike the right balance in taking a pragmatic approach to setting Key Commitments that benefits the sector and the communities it serves, while at the same time being workable from a regulatory perspective and consistent with the legal framework.

- 3.19 We believe that the requirements in community radio licences to meet their character of service and deliver social gain are sufficient to protect audiences and deliver high-quality, relevant services to communities. We expect stations to be meeting these requirements at all times and will continue to take appropriate and proportionate enforcement action for breaches of community radio licences.
- 3.20 In light of these considerations, we are proposing to simplify and streamline community radio licences by removing certain quotas and requirements. This should provide stations with greater flexibility so they can focus on delivering social gain for their target communities. We discuss our specific proposals and their impact in more detail in Section 4 below.

4. Proposed new approach to Key Commitments

Summary of proposed approach

- 4.1 We continue to believe that it is important for the Key Commitments to fulfil the dual purpose of setting out the character of service which a station will deliver, and the elements of social gain which will be delivered by the Licensee, both on-air and off-air.
- 4.2 Our objective is to capture the core elements of the character of service in each community radio licence, but in a way that provides those services greater flexibility to make best use of what can be scarce resources, freeing up those services to better deliver social gain to their target communities.
- 4.3 To do so, we are proposing to remove specific quotas relating to the main types of music and speech output, the number of hours of original output broadcast each week, the number of hours of locally produced output broadcast each week and the languages broadcast on the service. We have explained our proposals in more detail below.
- 4.4 As explained in Section 3 above, our experience of regulating the community radio sector has suggested that quota-based Key Commitments may not be the most effective way of ensuring that community radio licensees provide the best service to their respective target communities. These quotas do not guarantee quality of service, and focusing on meeting them can inhibit Licensees from making other changes to improve the delivery of their service and better serve its target community. We have explained our proposals in more detail below.
- 4.5 We are not proposing to make any changes to the social gain requirements captured in Key Commitments. We are also proposing to retain the requirement for each station to broadcast from a studio within its coverage area, as this is an important factor in encouraging members of the target community to access a station, both in facilitating participation in the service and allowing listeners to provide feedback to the station and ensure accountability.

Specific proposals

Music

- 4.6 Key Commitments currently contain requirements for the particular genres of music which are played on community radio stations each week. As with all aspects of Key Commitments, these vary in specificity across licensees, which creates unequal regulatory burdens for different stations and a lack of flexibility for licensees across the sector.
- 4.7 Some community radio stations are specialist music stations, appealing to listeners of specific music genres. For these stations, playing a specific music genre is a core element of the character of service and we expect that their particular genre(s) will be included in their character of service meaning they will still be required to broadcast these specific types of music.

- 4.8 For most other stations, however, we do not think a separate obligation relating to the specific types of music played over the course of a week is necessary. Removing these requirements will allow stations to have greater flexibility to respond to changing listener demand and the interests of volunteer presenters with an affinity for a particular musical genre, without negatively affecting the overall service delivered.
- 4.9 We recognise that some stations will continue to be limited by the character of service in the type of music they play. For example, we would expect that a station targeting young people would play much more modern music than older/classic tracks, in line with its target community, or that a station targeting an Asian community would be more likely to play culturally relevant music, as opposed to UK chart music, than a station targeting an entire geographic community. We believe that these requirements can be enforced appropriately through the character of service requirements in each licence, without the need for a list of specific musical genres which must be played each week.

Question 1: Do you agree with Ofcom’s proposal to remove specific music genre requirements from Key Commitments (other than where music is a core element of the character of the service)? Please provide further information and/or evidence in support of your response.

Speech

- 4.10 Key Commitments currently contain requirements for the particular types of speech content which will be delivered over the course of each week. These vary in scope, but typically cover more ‘standard’ aspects such as local news, community information and travel news, alongside more specific requirements in some licences, such as news on particular topics (e.g. entertainment or farming), or programming such as comedy shows or drama.
- 4.11 Our view is that, where a type of speech content is not explicitly referenced in the overall description of the character of service, it is not crucial to the service delivered to listeners. We expect that all stations will continue to provide speech content which is relevant to their target community, and that this will in most cases include local news and information, presented in a way which encourages discussion and engagement with audiences, thereby delivering social gain to audiences.
- 4.12 However, we do not think it is necessary for Ofcom to separately stipulate the particular types of speech content which must be broadcast over the course of each week, recognising changing listener habits and interests over time, as well as challenges around volunteer availability for small radio stations.

Question 2: Do you agree with Ofcom’s proposal to remove specific speech content requirements from Key Commitments (other than where particular speech content is a core element of the character of service)? Please provide further information and/or evidence in support of your response.

Original and locally produced output

- 4.13 The majority of Key Commitments currently include requirements for minimum amounts of original and locally produced output broadcast over the course of each week.
- 4.14 Original output is content which is produced for, and first transmitted by, the relevant community radio station. It therefore excludes repeats and syndicated programming. It also

does not include continuous music with no original speech content – an hour of music interspersed with adverts and station idents would not be considered original output.

- 4.15 Locally produced output is any output produced and broadcast from within the coverage area of a community radio station. Unlike original output this can include continuous music, where that content is broadcast from within the coverage area, but does not include most syndicated programming (where it is produced by third parties from another location) or remote broadcasting from outside the coverage area.
- 4.16 We are proposing to remove these requirements from Key Commitments, as they do not necessarily guarantee any benefit for a station’s target community. We recognise that, under the present approach, stations can be found in breach of their licence for delivering slightly below their quotas (especially where some stations have daily quotas) even though they may be otherwise delivering high quality community radio content for their target communities.
- 4.17 We also recognise that aiming to fill a quota of content each week can inhibit stations’ flexibility to best serve their listeners, and can cause significant difficulties for volunteer stations struggling for resources.
- 4.18 This is not to say that we do not consider original and locally-produced output to be vitally important for community radio stations – we continue to believe that this content is the most relevant and beneficial content that stations can deliver to their communities and supports in the delivery of social gain. For that reason, other than in exceptional circumstances, we would continue to expect that stations would broadcast content that is both original and locally-produced every day. As with the speech and music requirements, we believe that this requirement can be enforced through each station’s character of service.

Question 3: Do you agree with Ofcom’s proposal to remove original output requirements from Key Commitments? Please provide further information and/or evidence in support of your response.

Question 4: Do you agree with Ofcom’s proposal to remove locally produced output requirements from Key Commitments? Please provide further information and/or evidence in support of your response.

Language requirements

- 4.19 For stations which are required to broadcast languages other than English, Key Commitments currently include specific requirements for languages broadcast over the course of each week. In many cases where non-English languages are listed, this is important in ensuring the licensee broadcasts to its target community in the languages they speak. However, in some cases, non-English language requirements are listed which do not tally with the target community listed in the character of service.
- 4.20 We are proposing to remove the specific language requirement section of the current Key Commitment format. However, where we consider that the languages listed are important to the overall character of service and are not specifically referenced in the character of service, we propose to add a line to the character of service specifying that these languages will be broadcast on the station.
- 4.21 We recognise that there are some stations with requirements to broadcast in the Welsh language. In line with our obligations under the Welsh Language Measure, we propose to

retain this requirement in all of the relevant Key Commitments. A Welsh Language impact assessment can be found in paragraph 4.48 below.

Question 5: Do you agree with Ofcom’s proposed approach to language requirements for community radio stations? Please provide further information and/or evidence in support of your response.

Standardising wording

- 4.22 Removing the specific requirements and quotas from Key Commitments will mean that Ofcom’s enforcement of compliance with Key Commitments rests more heavily on licensees’ character of service. We recognise that, currently, character of service descriptions can vary significantly between licensees, both in level of detail and the wording used.
- 4.23 To ensure greater consistency across licences, we are proposing that, as part of the licence variation process detailed below, we would seek to standardise some of the language used in character of service descriptions between services of the same nature.
- 4.24 For example, we would seek to ensure that descriptions were broadly consistent across geographical services (including services for the entire population of a particular area or locality), services for a particular ethnic community, religious services or services aimed at a particular interest group (such as certain genres of music). This would aid consistency in Ofcom’s enforcement approach across licensees.
- 4.25 We recognise that many stations have unique aspects of service delivery captured within their character of service, and we would not seek to remove these aspects. However, we may seek to clarify any wording which appears ambiguous. As set out in more detail below, we will only make any such changes after giving affected licensees the opportunity to make representations

Question 6: Do you agree with Ofcom’s proposed approach to standardising wording (where appropriate) in the character of service descriptions for community radio stations? Please provide further information and/or evidence in support of your response.

Assessment of the impact of our proposals

- 4.26 In the paragraphs below, we have assessed the likely impact of our proposals taking into account our legal obligations in:
- a) Section 7 of the Communications Act which requires us to carry out and publish an assessment of the likely impact of implementing proposals which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom’s activities.
 - b) Section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998 which require us to take into account potential equality impacts.
 - c) Section 3(4) of the Communications Act which requires us to take into account the needs and interests of specific groups of persons.
 - d) The Welsh Language Measure 2011 which requires us to consider the impact of our proposals on the Welsh language.

4.27 The relevant legislation is set out more fully in Annex 2 below.

Impacts on licensees

- 4.28 We believe that these proposals will have an overall positive effect on licensees, by removing some of the more restrictive requirements on licensees and providing them with additional flexibility in considering how to best serve their communities through the delivery of both on-air and off-air social gain.
- 4.29 Licensee feedback has suggested that many are struggling to recruit and retain volunteer resource, particularly following the Covid-19 pandemic and subsequent cost of living crisis, which can have a significant impact on licensees' ability to meet their Key Commitments regarding original and locally produced output. We have also heard from licensees that meeting locally produced output requirements can be difficult, particularly in rural areas where public transport links to studio locations are poor, or for disabled volunteers. These types of issues are borne out in the increase in investigations into licensees' compliance with these aspects of the Key Commitments in recent years. We believe that our proposed changes will relieve some of the pressures felt by licensees to meet the specific quotas currently included in their Key Commitments. We also believe that our proposals will provide additional flexibility for these licensees in terms of the location of their broadcasts, while maintaining the requirement for licensees to have a physical studio located within the coverage area of the service, which we believe is important for the delivery of off-air social gain and providing access for the target community.
- 4.30 We also believe that removing specific requirements relating to music and speech output will have a positive impact on licensees, as it will allow them to more easily react to changing audience needs and deliver content better suited to their target communities, without having to seek Ofcom approval for changes. We also recognise that in some cases, licensees proposed types of content in their original applications and Key Commitments based on the resources they had in place at the time, which may no longer be applicable.
- 4.31 We recognise that there is potential for some negative impacts on licensees by removing these specific aspects of Key Commitments. For example, while licensees will be familiar with complying with quota-based Key Commitments which provide certainty to a licensee in terms of whether they are complying, some licensees may find it harder to determine what they need to broadcast in order to comply solely with more subjective Key Commitments. This may impact some sub-groups more significantly than others (such as licensees who are neurodiverse, older licensees or those for whom English is not a first language), but there is no evidence to suggest this will happen.
- 4.32 In order to mitigate these potential impacts as far as possible, we have proposed standardising some of the wording in character of service descriptions where appropriate. This will allow for greater consistency in our enforcement of Key Commitments and will allow licensees to more easily share best practice across the sector.
- 4.33 Furthermore, while it would not be appropriate for Ofcom to dictate to licensees how they should meet their Key Commitments, we have proposed at the end of this section some broad compliance principles. These are intended to provide some high-level principles for licensees to take into account when considering whether they are complying with their Key Commitments. We also intend to take these principles into account when deciding whether to open, and as part of any, formal investigation into whether a licensee may be in breach of its Key Commitments.

- 4.34 We also note that, while we are removing the quantifiable aspects of Key Commitments, the character of service requirements have been in place since the inception of community radio, and we have not been provided with evidence that a significant number of licensees have difficulty understanding how to comply with this aspect of their Key Commitments.

Impacts on target communities

- 4.35 We believe that overall our changes will benefit target communities. These target communities are often comprised of disadvantaged and under-represented groups of people that share certain characteristics. (including protected characteristics under equality legislation).
- 4.36 As explained above, our proposals should provide stations with greater flexibility so they can focus on delivering social gain for their target communities. In doing so, we believe our proposals will allow licensees to better meet the needs of their target communities and improve equality of opportunity for groups sharing certain characteristics. Licensees should also have more time to focus on important issues such as tackling prejudice in their communities and seeking to bring divided groups together and support their mutual understanding. In doing so, we believe our proposal should also help foster good relations between different groups.
- 4.37 We recognise that, in the absence of any other evidence, the removal of quotas within Key Commitments could adversely impact the service provided to listeners within a particular target community as the licensee would no longer have to meet specific requirements and minimum output levels over the course of each day and/or week. This could mean a community radio service becomes more loosely associated with the relevant target community resulting in a subsequent decline in the social gain provided by such services. Given the nature of community radio, which often targets under-represented groups and communities, there is a potential for this to have a disproportionate impact on these groups. There is also a risk that some audiences, particularly those who speak languages other than English, could see a reduction in service from these requirements, where the particular language requirement or type of speech programming is no longer included in the Key Commitments.²
- 4.38 However, we are confident that in the majority of cases these risks will not materialise. As set out above, we believe that removing these specific elements of Key Commitments will provide licensees with greater flexibility to maximise their delivery of social gain to their target community, both on and off-air.
- 4.39 We also believe that, while these elements of Key Commitments have ensured minimum service levels, most community radio stations, as volunteer-run not-for-profit organisations, will not reduce service provision in the absence of these quotas. Indeed, providing licensees with additional resource flexibility could serve to broaden opportunities for their target community to become involved in their community radio service, as licensees may have more resources to devote to off-air social gain such as training, particularly for groups such as those with disabilities whose training may be more complex and require more resources from licensees.
- 4.40 We also intend to review each set of Key Commitments, providing licensees with the opportunity to make representations, to ensure that the core aspects of the Key

² We discuss Key Commitments relating to Welsh language requirements in paragraphs 4.48 to 4.50 below.

Commitments are preserved and that their target community continue to be served effectively. Where we think that licensees have aspects in their Key Commitments of particular value to their target community, such as particular types of music or speech output, we will ensure that these elements continue to be enshrined in Key Commitments and can therefore be enforced.

- 4.41 More generally, our enforcement approach will ensure that minimum service levels are upheld. We expect licensees to be able to clearly demonstrate how they are delivering for their target communities on-air, notwithstanding the proposed removal of quotas for this type of content.
- 4.42 In particular, while each case must be considered on its own merits, we do not believe that most services can meet their character of service obligations while providing a minimal amount of original or locally produced output each week. Therefore, while we recognise the potential for some negative impacts on listeners (including groups of people sharing certain characteristics) from these changes, we believe that our proposed approach mitigates these potential impacts and should not be a barrier to the changes we are proposing. For the reasons set out above, we believe our proposals will protect the service delivered to audiences and deliver overall benefits to target communities.

Impacts on how Ofcom fulfils its regulatory functions

- 4.43 As explained in Section 3 above, over recent years we have seen a significant increase in the number of complaints associated with community radio stations that appear to be breaching their Key Commitments, particularly in relation to original and locally-produced output. However, where a breach relates to missing a specific quota (in particular a small breach of one quota on a specific day), the benefits of an investigation are likely to be more limited. This is particularly likely to be the case where a licensee is otherwise complying with its Key Commitments and providing significant social value to its target community. Assessing complaints, and any subsequent formal investigations, consume significant resources from both Ofcom and the licensee and provide limited benefits for target communities, especially where the shortfall is small. Our proposal should result in fewer complaints relating to a failure to comply with specific quotas and fewer formal investigations into issues which are likely to result in more limited harm to listeners.
- 4.44 Similarly, we currently process a relatively high number of Key Commitment change requests relating solely to the aspects of Key Commitments we are proposing to remove, in particular requests to reduce the hours of original and locally produced output which stations are required to broadcast each week. These changes would also free up the resources used to process these requests.
- 4.45 We believe that these proposals, which will move the focus of our enforcement processes away from quantifiable aspects of a licensee's Key Commitments, will mean that we are able to focus on licensees' overall compliance with the on-and off-air social gain, and the character of service as a whole. This should ensure that listeners and particular groups who stations are supposed to serve will be better protected and enable us to focus our resources on areas where there is a greater potential of harm to target communities.
- 4.46 Beyond resourcing, the proposed changes are likely to have an impact on the way we carry out our enforcement function, as we will have fewer quota-based investigations. We recognise that the nature of the investigations we will carry out will require us to make more subjective decisions based on our assessment of the evidence, rather than based on strict quotas which have or have not been met. We have significant experience in assessing

compliance with more subjective requirements and are confident we will be able to continue effectively carrying out our enforcement functions in a way which maintains an appropriate levels of scrutiny on licensees' compliance with the core aspects of their Key Commitments.

- 4.47 As set out above, we believe that these proposals will free up Ofcom resources currently used in processing quota-based enforcement cases and Key Commitment change requests for other more effective uses, including areas where the potential for harm to target communities is more serious and direct.

Welsh language impact assessment

- 4.48 We are also required to take Welsh language considerations into account when formulating, reviewing or revising policies which are relevant to Wales. Our Welsh language obligations are set out in Annex A2 below.
- 4.49 As explained in Section 4 above, we are proposing that all Welsh language requirements currently in place will be maintained in Key Commitments following this process. Therefore, we do not consider our proposals have any impact on our Welsh language obligations.
- 4.50 Retaining relevant stations' requirement to broadcast in the Welsh language will ensure that there is no reduction in opportunities for people to use the Welsh language as a result of these proposals. We have considered whether there are ways in which these proposals could have a positive effect on use of the Welsh language, but as we are not proposing to make substantive changes to stations' character of service, we do not consider it is appropriate to impose additional Welsh language obligations.

Question 7: Do you agree with Ofcom's assessment of the impacts of its proposed changes (including potential impacts on specific groups of persons including equality impacts)? Please provide further information and/or evidence in support of your response.

Question 8: Are there any impacts of these proposals which Ofcom has not recognised in this document?

Question 9: Do you agree with our assessment of the potential impact of our proposals on the Welsh language? Please provide further information and/or evidence in support of your response.

Question 10: Do you think our proposal could be formulated or revised to ensure, or increase, positive effects, or reduce/eliminate any negative effects, on opportunities to use the Welsh language and treating the Welsh language no less favourably than English?

Compliance principles

- 4.51 As set out above, we recognise that removing these specific aspects of Key Commitments does not offer the same level of certainty and may make it harder for some licensees to understand how they can comply with their Key Commitments. It is not appropriate for Ofcom to dictate to licensees how they should comply with the conditions of their licence. We have however set out below some broad principles we are proposing for licensees to

take into account when considering whether they are complying with their Key Commitments. We also intend to take them into account when deciding whether to open, and as part of any, formal investigation into whether a licensee may be in breach of its Key Commitments.

- a) Ofcom's approach to assessing complaints about stations' compliance with their Key Commitments is to assess compliance over the course of a week, using recordings and written information provided by the station, and we do not propose that this will change.
- b) When considering compliance with character of service obligations, stations should ensure that it is clear from their content who their target community is at all (or at least most) times. We expect that a station aimed at a particular ethnic minority, for example, would sound different from a station with a 'mainstream' character of service.
- c) Licensees should consider whether all of their programming is aimed at their target community, or whether certain aspects of programming are more heavily relied upon, and consider the weight given to different aspects of programming.
- d) In order to serve the target community, having presenters from the target community is desirable both in providing relevant content to meet the character of service and in meeting a station's social gain objectives. In any case, programming should appeal to the target community and reflect the character of service.
- e) Where specialist/specific programming is referenced in a station's character of service, we recognise that it might only form a small part of a station's overall programming. However, licensees should ensure that this programming is carried consistently and appropriately scheduled and signposted to ensure that listeners are aware of it and can benefit from it. For example, stations which include reference to health and wellbeing in their character of service should consider how this is reflected across the schedule, considering the most appropriate days of the week and times of day to broadcast the content, and how such programming is promoted on-air.
- f) While we are proposing to remove the specific quotas relating to original and locally produced output from Key Commitments, we expect that most stations will continue to broadcast some original and locally produced output each day. We would generally consider that a station broadcasting no content of this type would struggle to meet its character of service and deliver social gain for its target community. In the event of Ofcom assessing a licensee's compliance with its Key Commitments (as a result of a complaint or monitoring), a licensee should be able to justify to Ofcom how the amount of original and locally produced content it broadcasts enables it to meet its character of service and social gain commitments.

Question 11: Do you agree with our proposed compliance principles?

5. Proposed next steps

- 5.1 This consultation will be open for 12 weeks. We invite stakeholders to respond any time before the consultation closes, answering any or all of the consultation questions.
- 5.2 Once the consultation closes, we will consider the responses received, and will then publish a statement summarising these responses and setting out our final decisions. We will consider whether any of the responses and/or evidence received should change our proposals.
- 5.3 Ofcom can provide information in a variety of formats on request, e.g., accessible PDF, large print, easy read, audio recording, or braille. If you let us know what information you require and in what format, we will consider the request and respond within 21 days.

Licence variation process

- 5.4 If, after considering the responses to this consultation, we decide to make these changes, Ofcom will use its powers under s86(5) of the Broadcasting Act 1990 to vary existing licences, in accordance with clause 21 of each licence.
- 5.5 As part of that process, Ofcom will assess each licensee's Key Commitments and reach a preliminary view on which aspects are to be removed, and whether there is anything which needs to be added to the character of service, or clarified within it.
- 5.6 We will then write to licensees with our proposed version of their character of service, to allow licensees to make representations, as required by s86(5)(b) of the Broadcasting Act 1990 before licence variations take place.
- 5.7 This process will not require a public consultation for each station because there will not be any substantial change to the character of service of the stations in question. We therefore do not consider that our proposals engage section 106(1A) of the Broadcasting Act 1990.

Question 12: Do you agree with Ofcom's proposed next steps for varying Key Commitments?

A1. Legal Framework

Statutory framework

A1.1 The full text of the legislative provisions which are relevant to the subject matter of this consultation is as follows.

Broadcasting Act 1990

A1.2 Section 85 of the Broadcasting Act 1990 gives Ofcom its power to grant licences to provide relevant independent radio services, and requires Ofcom to do all that they can to secure the provision of a range and diversity of local radio services.

85 Licensing functions of Authority.

(1) Subject to subsection (2), OFCOM may, in accordance with the following provisions of this Part, grant [F2] licences to provide relevant independent radio services.

(2) OFCOM shall do all that they can to secure the provision within the United Kingdom of—

(a) a diversity of national services each catering for tastes and interests different from those catered for by the others and of which—

(i) one is a service the greater part of which consists in the broadcasting of spoken material, and

(ii) another is a service which consists, wholly or mainly, in the broadcasting of music which, in the opinion of OFCOM, is not pop music; and

(b) a range and diversity of local services.

A1.3 Section 86 of the Act gives Ofcom its power to vary licences granted under section 85, and requires Ofcom to give licensees the opportunity to make representations about a variation.

86 Licences under Part III.

...

(5) OFCOM may vary a licence by a notice served on the licence holder if—

(a) in the case of a variation of the period for which the licence is to continue in force, the licence holder consents; or

(b) in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to OFCOM about the variation.

A1.4 Section 105 of the Act sets out the criteria which Ofcom are required to consider when determining licence applications. Further additions and amendments were made to this section by the Schedule to the Community Radio Order 2004 as set out below.

105 Special requirements relating to grant of local licences.

Where OFCOM have published a notice under section 104(1), they shall, in determining whether, or to whom, to grant the local licence in question, have regard to the following matters, namely—

(a) the ability of each of the applicants for the licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;

(b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;

(c) the extent to which any such proposed service would broaden the range of programmes available by way of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and

(d) the extent to which there is evidence that, amongst persons living in that area or locality, there is a demand for, or support for, the provision of the proposed service.

- A1.5 Section 106 of the Act requires Ofcom to impose such conditions in licences as are appropriate to ensure that the character of the service is maintained for the duration of the licence.

106 Requirements as to character and coverage of national and local services.

(1) A national or local licence shall include such conditions as appear to OFCOM to be appropriate for securing that the character of the licensed service, as proposed by the licence holder when making his application, is maintained during the period for which the licence is in force.

(1A) Conditions included in a licence for the purposes of subsection (1) may provide that OFCOM may consent to a departure from the character of the licensed service if, and only if, they are satisfied—

(a) that the departure would not substantially alter the character of the service;

(b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;

(c) that, in the case of a local licence, the departure would be conducive to the maintenance or promotion of fair and effective competition in that area or locality;

(d)that, in the case of a local licence, there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or

(e)that, in the case of a local licence—

(i)the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but

(ii)those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services))

(1B) The matters to which OFCOM must have regard in determining for the purposes of this section the character of a service provided under a local licence include, in particular, the selection of spoken material and music in programmes included in the service.

(2)A national or local licence shall include conditions requiring the licence holder to secure that the licensed service serves so much of the area or locality for which it is licensed to be provided as is for the time being reasonably practicable.

Community Radio Order 2004

A1.6 Article 3 of the Order sets out the characteristics of community radio services.

3.—(1) It is a characteristic of community radio services that they are local services provided primarily—

(a)for the good of members of the public, or of particular communities, and

(b)in order to deliver social gain,

rather than primarily for commercial reasons or for the financial or other material gain of the individuals involved in providing the service.

(2) It is a characteristic of every community radio service that it is intended primarily to serve one or more communities (whether or not it also serves other members of the public).

(3) It is a characteristic of every community radio service that the person providing the service—

(a)does not do so in order to make a financial profit by so doing, and

(b)uses any profit that is produced in the provision of the service wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve.

(4) It is a characteristic of every community radio service that members of the community it is intended to serve are given opportunities to participate in the operation and management of the service.

(5) It is a characteristic of every community radio service that, in respect of the provision of that service, the person providing the service makes himself accountable to the community that the service is intended to serve.

A1.7 Article 2 of the Community Radio Order 2004 defines ‘community’ and ‘social gain’ as follows.

(1)

...

“community” means—

(a)the persons who live or work or undergo education or training in a particular area or locality, or

(b)persons who (whether or not they fall within paragraph (a)) have one or more interests or characteristics in common;

...

...

(2) In relation to a community radio service, “social gain” means the achievement, in respect of individuals or groups of individuals in the community that the service is intended to serve, or in respect of other members of the public, of the following objectives—

(a)the provision of sound broadcasting services to individuals who are otherwise underserved by such services,

(b)the facilitation of discussion and the expression of opinion,

(c)the provision (whether by means of programmes included in the service or otherwise) of education or training to individuals not employed by the person providing the service, and

(d)the better understanding of the particular community and the strengthening of links within it,

and may also include the achievement of other objectives of a social nature and, in particular, those mentioned in paragraph (3).

(3) Those objectives are—

(a) the delivery of services provided by local authorities and other services of a social nature and the increasing, and wider dissemination, of knowledge about those services and about local amenities;

(b) the promotion of economic development and of social enterprises;

(c) the promotion of employment;

(d) the provision of opportunities for the gaining of work experience;

(e) the promotion of social inclusion;

(f) the promotion of cultural and linguistic diversity;

(g) the promotion of civic participation and volunteering.

A1.8 The Schedule to the Order sets out additions/amendments to the Broadcasting Act 1990.

A1.9 Paragraph 5 of the Schedule makes additions/amendments to section 105 of the Broadcasting Act 1990.

...

5.—(1) Section 105(1) (which makes provision as to the matters to which OFCOM are required to have regard in determining whether, and to whom, to grant local licences) shall have effect as if the provision made by that section were re-numbered as subsection (1) of that section, and as if, in that provision—

(a) for the words “local licence” there were substituted the words “community radio licence”;

(b) in paragraph (b), for the words from “living in the area or locality for which the service would be provided” there were substituted the words “comprising the relevant community”;

(c) in paragraph (c), for the word “for”, in the first place where it occurs, there was substituted the word “in”, and for the words “cater for tastes” to the end there were substituted the words “be of a nature or have a content distinct from that of any other local service the licence for which would overlap with the licence for the proposed service”;

(d) the word “and” immediately before paragraph (d) was omitted, and after the word “service” in that paragraph there were added the following paragraphs—

“(e) the extent to which the provision of any such proposed service would result in the delivery of social gain to the public or the relevant community;

(f) the provision that each of the applicants proposes to make in order to render himself accountable to the relevant community in respect of the provision of the proposed service;

(g) the provision that each of the applicants proposes to make to allow for access by members of the relevant community to the facilities to be used for the provision of the service and for their training in the use of those facilities”.

(2) Also, that section shall have effect as if the following subsections were added at the end—

...

(3) Where OFCOM have published a notice under section 104(1), in the case of a proposal of theirs to grant a licence to provide a community radio service, they shall, in determining—

(a) whether, or to whom, to grant the licence in question, and

(b) if they grant it, the terms on which it is granted,

have regard to the need to ensure that any service provided under that licence does not prejudice unduly the economic viability of any other local service.

(4) Accordingly, and without prejudice to the generality of subsection (3)—

(a) OFCOM shall not grant a licence to provide a community radio service in any case where the licence, if granted, would overlap with another local licence for a service, other than a community radio service, the potential audience of which includes no more than 50,000 persons who have attained the age of 15 years;

(b) every licence to provide a community radio service that overlaps with any other local licence the potential audience of which includes more than 50,000 persons who have attained the age of 15 years, but no more than 150,000 such persons, must contain such conditions as appear to OFCOM to be appropriate for prohibiting—

(i) the inclusion in that service of any remunerated advertisement, and

(ii) the sponsorship of any programmes included in that service; and

(c) every licence to provide a community radio service, other than a licence to provide a service such as falls within paragraph (b) above, must contain the conditions mentioned in subsection (5).

(5) Subject to subsection (6), the conditions are those that appear to OFCOM to be appropriate, in the case of the community radio licence in question, for ensuring that the amount of such of the relevant income for that licence as is attributable to any arrangements for—

(a) the inclusion in the service provided under that licence of any remunerated advertisement, or

(b) the sponsorship of any programmes included in that service, does not, in any financial year of the licence holder, exceed such proportion of the total relevant income for that licence in that year as may be specified in those conditions.

...

The Community Radio (Amendment) Order 2015

A1.10 This Order modified the Schedule to the Community Radio Order 2004 and in doing so further modified section 105 of the Broadcasting Act 1990.

...

5.—(1) Paragraph 5(2)(4) (which modifies section 105 of the Broadcasting Act 1990 by adding subsections (2) to (8) to that section as it has effect in relation to a community radio service) is amended as follows.

(2) In the subsection (3) added to that section—

(a) after “provide a community radio service,” insert “or where OFCOM is considering a variation of such a licence under section 86(5) to include conditions set out in subsection (5)”;

(b) in paragraph (a) after “in question” insert “(or, as the case may be, whether to vary the licence in question pursuant to section 86(5))”; and

(c) in paragraph (b) after “it is granted,” insert “(or, as the case may be, the terms of the variation of the licence in question pursuant to section 86(5)),”.

(3) For paragraph (b) of the subsection (4) added to that section substitute—

“(b) subject to paragraph (c), every licence to provide a community radio service that overlaps with any other licence, other than a community radio service, the potential audience of which includes no more than 150,000 persons who have attained the age of 15 years must contain such conditions as appear to OFCOM to be appropriate for ensuring that the relevant income for that community radio licence as is attributable to any arrangements for—

(i) the inclusion in that service of any remunerated advertisement, and

(ii) the sponsorship of any programmes included in that service, does not, in any financial year of the licence holder, exceed £15,000;”.

(4) For paragraph (c) of the subsection (4) added to that section substitute—

“(c) every licence to provide—

(i) a community radio service that overlaps with any other local licence for a service, other than a community radio service, the potential audience of which includes no more than 150,000 persons who have attained the age of 15 years, where that local licence has at any time been varied pursuant to section 106(1A)(e)(5), or

(ii) a community radio service, other than a service such as falls within paragraph (b), must contain the conditions mentioned in subsection (5).”.

(5) For the subsection (5) added to that section substitute—

“(5) Subject to subsection (6), the conditions referred to in subsection (4)(c) are those that appear to OFCOM to be appropriate, in the case of the community radio licence in question, for—

(a) permitting the relevant income for that licence attributable to any arrangements for—

(i) the inclusion in the service provided under that licence of any remunerated advertisement, or

(ii) the sponsorship of any programmes included in that service,

to include the sum of £15,000 per financial year of the licence holder (“the fixed revenue allowance”); and

(b) ensuring that where the relevant income attributable to the arrangements set out in paragraph (a) exceeds the fixed revenue allowance in any financial year of the licence holder, any such relevant income in excess of the fixed revenue allowance does not exceed 50% of the total relevant income (disregarding the fixed revenue allowance) for that licence in that year.”

(6) After the subsection (5) added to that section insert—

“(5A) The Secretary of State may, from time to time, request OFCOM to review whether the £15,000 figure in subsections (4)(b) and (5) remains appropriate.”

(7) For subsection (6) added to that section substitute—

“(6) OFCOM may include conditions in a licence to provide community radio services falling within subsection (4)(c), which modify the percentage of the total relevant income referred to in subsection (5), if it appears necessary to secure the result that—

*(a)the inclusion in any community radio service of remunerated advertising; or
(b)the sponsorship of programmes included in that service,
do not prejudice unduly the economic viability of any other local service (other than a
community radio service).”*

A2. Impact assessments

Impact Assessment

- A2.1 Section 7 of the Communications Act requires us to carry out and publish an assessment of the likely impact of implementing a proposals which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom’s activities.
- A2.2 More generally, impact assessments form part of good policy making and we therefore expect to carry them out in relation to a large majority of our proposals. We use impact assessments to help us understand and assess the potential impact of our policy decisions before we make them. They also help us explain the policy decisions we have decided to take and why we consider those decisions best fulfil our applicable duties and objectives in the least intrusive way. Our [impact assessment guidance](#) sets out our general approach to how we assess and present the impact of our proposed decisions.
- A2.3 The relevant duties in relation to the proposal on which we are consulting are set out in Annex 1 of this consultation. We expect this proposal to have an overall positive impact for licensees, target communities and Ofcom. As set out more fully in paragraphs 4.28 to 4.42, we expect that the net effect of simplifying Key Commitments for analogue radio stations will free up licensees’ resources, allowing those stations to better focus on sustainability and serving their target community. This should in turn benefit listeners and the wider target community.
- A2.4 Similarly, we expect that Ofcom resources will be freed up by this proposal, as we will not need to consider complaints about these aspects of the Key Commitments. This will allow us to focus our resources on issues with a greater risk of harm to target communities.
- A2.5 We recognise that streamlining Key Commitments in this way has the potential to adversely impact the service delivered to listeners within a particular target community, given that stations will no longer have to meet quotas over the course of each week. However, we are confident that the remaining aspects of the Key Commitments, which describe the character of the service and the service’s social gain obligations, will be sufficient to ensure that services will continue to deliver to their target community. We will continue to investigate non-compliance with Key Commitments when appropriate and proportionate to do so.

Equality Impact Assessment

- A2.6 Section 149 of the Equality Act 2010 imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age, disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- A2.7 Section 75 of the Northern Ireland Act 1998 (the “1998 Act”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need

to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's [Revised Northern Ireland Equality Scheme](#) explains how we comply with our statutory duties under the 1998 Act.

- A2.8 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- A2.9 When thinking about equality we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our [impact assessment guidance](#)).
- A2.10 In particular, section 3(4) of the Communications Act also requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. These include:
- a) the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
 - b) the needs of persons with disabilities, older persons and persons on low incomes; and
 - c) the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.
- A2.11 We examine the potential impact our policy is likely to have on people, depending on their personal circumstances. This also assists us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A2.12 For the reasons explained more fully in paragraphs [4.26 – 4.47 above], we believe our proposal will have overall positive equality impacts. In particular, our proposals should provide stations with greater flexibility so they can focus on delivering social gain for their target communities. In doing so, we believe our proposals will allow licensees to better meet the needs of their target communities and improve equality of opportunity for groups sharing certain characteristics. Licensees should also have more time to focus on important issues such as tackling prejudice in their communities and seeking to bring divided groups together and support their mutual understanding. In doing so, we believe our proposal should also help foster good relations between different groups.
- A2.13 We recognise that licensees with one or more protected characteristic (such as licensees who are neurodiverse, older licensees or those for whom English is not a first language) may find it harder to comply solely with more subjective Key Commitments rather than ones based on specific quotas. To help mitigate these potential impacts we have proposed at the end of section 4 above some high-level principles for licensees to take into account when considering whether they are complying with their Key Commitments. We are also proposing standardising some of the wording in character of service descriptions which will allow licensees to more easily share best practice across the sector.

Welsh language impact assessment

- A2.14 The Welsh Language (Wales) Measure 2011 made the Welsh language an officially recognised language in Wales. This legislation also led to the establishment of the office of the Welsh Language Commissioner who regulates and monitors our work. Ofcom is required to take Welsh language considerations into account when formulating, reviewing or revising policies which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).
- A2.15 Where the Welsh Language Standards are engaged, we consider the potential impact of a policy proposal on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language. We also consider how a proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects.
- A2.16 As explained in Section 4 above, we do not consider our proposals have any impact on our Welsh language obligations. Our assessment of the impacts of our proposals, as well as consultation questions regarding this assessment, can be found in section 4 of this document.
- A2.17 We note that there are some stations which currently have an obligation to broadcast in the Welsh language. We will ensure when varying the licences for these stations that this requirement is retained as part of the character of the service, and in doing so will ensure that there is no reduction in opportunities for people to use the Welsh language. We have considered whether there are ways in which these proposals could have a positive effect on use of the Welsh language, but as we are not proposing to make substantive changes to stations' character of service, we do not consider it is appropriate to impose additional Welsh language obligations.

A3. Responding to this consultation

How to respond

- A3.1 If you would like to provide views or comments on the issues raised in this document, please do so no later than 5pm on Thursday 13 June 2024.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/community-radio-future-approach-to-key-commitments>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to broadcast.licensing@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet.
- A3.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Broadcast Licensing Team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A3.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
 - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A3.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex X. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A3.10 If you want to discuss the issues and questions raised in this consultation, please email broadcast.licensing@ofcom.org.uk.

Confidentiality

- A3.11 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A3.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A3.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A3.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

Next steps

- A3.16 Following this consultation period, Ofcom plans to publish a statement in the autumn of 2024.
- A3.17 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A3.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A3.19 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
- A3.21 Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A4. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A4.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A5. Consultation coversheet

Basic details

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

Confidentiality

Please tick below what part of your response you consider is confidential, giving your reasons why

- Nothing
- Name/contact details/job title
- Whole response
- Organisation
- Part of the response

If you selected 'Part of the response', please specify which parts:

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes No

Declaration

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A6. Consultation questions

- A6.1 This consultation is seeking views from stakeholders on our proposals to streamline and simplify each analogue community radio station's Key Commitments. The proposal is to remove Key Commitments that relate to the amount and type of programming to be broadcast, e.g. the main types of music and speech output, the amount of original output, and amount of locally-produced the services will broadcast.
- A6.2 Mindful of the importance of minority language content for some community radio stations and their target audiences, we propose to retain those elements of the Key Commitments that relate to these languages. Where these are not already included in a station's character of service statement, we propose that existing language requirements are added to the character of service statement, maintaining the requirements for the provision of such language content.

Question 1: Do you agree with Ofcom's proposed approach to remove specific music genre requirements from Key Commitments? Please provide further information and/or evidence in support of your response.

Question 2: Do you agree with Ofcom's approach to remove specific speech content requirements from Key Commitments? Please provide further information and/or evidence in support of your response.

Question 3: Do you agree with Ofcom's approach to remove original output requirements from Key Commitments? Please provide further information and/or evidence in support of your response.

Question 4: Do you agree with Ofcom's approach to remove locally-produced output requirements from Key Commitments? Please provide further information and/or evidence in support of your response.

Question 5: Do you agree with Ofcom's proposed approach to language requirements for community radio stations? Please provide further information and/or evidence in support of your response.

Question 6: Do you agree with Ofcom's proposed approach to standardising language in the character of service descriptions for community radio stations? Please provide further information and/or evidence in support of your response.

Question 7: Do you agree with Ofcom's assessment of the impacts of its proposed changes? Please provide further information and/or evidence in support of your response.

Question 8: Are there any impacts of these proposals which Ofcom has not recognised in this document?

Question 9: Do you agree with our assessment of the potential impact of our proposals on the Welsh language? Please provide further information and/or evidence in support of your response.

Question 10: Do you think our proposal could be formulated or revised to ensure, or increase, positive effects, or reduce/eliminate any negative effects, on opportunities to

use the Welsh language and treating the Welsh language no less favourably than English?

Question 11: Do you agree with our proposed compliance principles?