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Broadcasting (Radio Multiplex Services) Bill 2016-17

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Contents:

1. Background
2. The Bill
3. Debate in the Commons



Contents

| | |
|---------------------------------|----------|
| Summary | 3 |
| 1. Background | 4 |
| 2. The Bill | 6 |
| 3. Debate in the Commons | 8 |
| 3.1 Second reading debate | 8 |
| 3.2 Public Bill Committee | 10 |

Summary

The [*Broadcasting \(Radio Multiplex Services\) Bill 2016-17*](#) is a Private Members' Bill, introduced by Kevin Foster on 4 July 2016.

The Bill had its second reading on 13 January 2017. The Bill was not amended in Public Bill Committee and will have its remaining stages on 3 February 2017.

The Department for Culture, Media and Sport (DCMS) is supporting the Bill and has prepared [Explanatory Notes](#).

In the UK, Digital Audio Broadcasting (DAB) radio services are broadcast as "multiplexes". This means that sound signals from a number of individual radio stations are combined together and transmitted as digital data.

At present, up to 400 local commercial and community radio stations are not carried on the DAB digital radio platform. This is the problem that the Bill seeks to address.

[Ofcom](#) regulates DAB multiplex services under Part 2 of the *Broadcasting Act 1996* (as amended by the *Communications Act 2003*).

The Bill, which has one substantive clause, would give the Secretary of State the power to amend the conditions for DAB multiplex licensing in order to "create a new, lighter touch regulatory framework appropriate for the licensing of small scale (DAB) radio multiplexes".

The Bill would extend to England and Wales, Scotland and Northern Ireland.

1. Background

What is digital radio?

The UK's broadcast radio sector includes both the FM and AM analogue radio platforms, as well as the Digital Audio Broadcasting (DAB) digital radio platform.

With digital radio, the audio signal is converted to a digital format and compressed at the point of broadcasting into a single radio frequency and then decoded by the (listener's) digital radio set receiver. Digital radio involves a more efficient use of radio spectrum compared to analogue and allows for more radio services to be delivered to listeners, as well as the delivery of text and visual information.¹

Multiplexes

In the UK, DAB radio services are broadcast as "multiplexes":

(...) This means that sound signals from a number of individual radio stations are combined together and transmitted as digital data. A DAB multiplex can be broadcast from many transmitters, all using the same transmission frequency, to cover a wide area. This is in contrast to analogue radio, where stations are simply broadcast on individual frequencies, and neighbouring transmitters cannot generally use the same frequencies as each other.²

[Ofcom](#), the communications regulator in the UK, licences radio multiplex services under Part 2 of the *Broadcasting Act 1996* (as amended by the *Communications Act 2003*).

There are three "layers" of commercial and independent radio in the UK:

- national radio stations
- local radio stations
- community radio stations³

Ofcom has given the following overview of the three layers:

On DAB, three national multiplexes (Digital One², Sound Digital³, and the BBC's national DAB service⁴) currently broadcast between 10 and 19 stations each. These national services are available to up to 97% of the UK population in the case of the most extensive network.

There are also 58 local commercial DAB multiplexes, covering approximately county-sized areas. Each local multiplex broadcasts up to 14 commercial radio stations, as well the relevant BBC local station for the area. Over 90% of UK households should be able to receive a local DAB multiplex by the end of 2016...⁴

¹ DCMS, [Explanatory Notes to the Broadcasting \(Radio Multiplex Services\) Bill 2016-17](#), 9 January 2017, para 9

² Ofcom, [Small scale DAB trials: final report](#), September 2016, para 2.2

³ In addition, the BBC provides its own national and local radio services

⁴ Ofcom, [Small scale DAB trials: final report](#), paras 2.4-2.5

On local commercial and community radio stations, Ofcom notes that there are up to 400 stations which are not carried on DAB:

(...) This is partly because local DAB multiplexes cover relatively large geographical areas, which can make the cost of carriage uneconomic for stations which seek to serve smaller towns or communities.

In addition, some local DAB multiplexes are already full of existing stations, meaning that new stations can't be added unless other services leave the multiplex or reduce the space they occupy (e.g. by moving from stereo to mono transmission).⁵

According to the DCMS, many of these smaller commercial and community radio stations "would like the option to broadcast on a terrestrial DAB platform to the areas they currently serve if a practical solution was available and if it could be done in a cost effective way".⁶

This is the issue that the Bill seeks to address.

Ofcom work on small-scale multiplexes

Between 2014 and 2016, the DCMS funded a programme of work by Ofcom to look at the potential of a new software-based approach to enable small scale broadcasting on the DAB platform.⁷

Ofcom's work included ten technical field trials of small scale DAB multiplexes in towns and cities across the country during 2015. The three main aims of the trial were:

- to test how well the small scale DAB technology worked;
- to test how well the technology lends itself to several parties coordinating their services (this is because DAB broadcasting involves several radio stations being transmitted as part of the same signal); and
- to give the market an opportunity to learn about small scale DAB and the potential opportunities the technology affords⁸

In a September 2016 [report](#), Ofcom said the trials achieved all three aims:

- The technology generally worked well and reliably, and technical problems identified were resolved. We are continuing work to improve the technical stability of some specific transmitter configurations.
- Coordination between service providers has generally been very effective. Across the ten trial areas, nearly 70 unique radio stations are now being carried, the majority of which are new to DAB.
- The ten trial operators have gained extensive practical experience of small scale DAB, and have also shared their experiences and technical knowledge with each other. Some operators have been directly involved in innovating further

⁵ Ibid, paras 2.6-2.7

⁶ [Explanatory Notes to the Broadcasting \(Radio Multiplex Services\) Bill 2016-17](#), 9 January 2017, para 5

⁷ Ibid, para 6

⁸ Ofcom, [Small scale DAB trials: final report](#), September 2016, para 1.6

technical enhancements to the small scale concept, and the trials have prompted wider market interest.⁹

The ten trial locations will remain on-air until 2018.¹⁰

Ofcom's report concluded: "...we believe that there is a significant level of demand from smaller radio stations for small scale DAB, and that a wider roll-out of additional small scale services into more geographic areas would be both technically possible and commercially sustainable."¹¹

2. The Bill

The [Broadcasting \(Radio Multiplex Services\) Bill 2016-17](#) is a Private Members' Bill, introduced by Kevin Foster on 4 July 2016.¹²

The Bill will have its remaining stages in the House of Commons on 3 February 2017.

The Department for Culture, Media and Sport (DCMS) is supporting the Bill and has prepared [Explanatory Notes](#).

The Bill, which has one substantive clause, would allow Ofcom "a degree of flexibility on the areas to be covered by small scale radio multiplex licences...to create a lighter touch licensing regime suitable for the new small scale radio multiplex services."¹³

The Bill would extend to England and Wales, Scotland and Northern Ireland.¹⁴

Small-scale radio multiplex services

Section 258 of the *Communications Act 2003* defines a radio multiplex service as a service which:

- is broadcast otherwise than by satellite so as to be available to members of the public; and
- provides, or is capable of providing, two or more digital sound services for simultaneous broadcast on the same frequency

Clause 1 of the Bill would insert a new section 258A into the 2003 Act to enable the provision of small-scale radio multiplex services.

Clause 1(2) would enable the Secretary of State to make an Order defining a small-scale radio multiplex service as being distinct from existing national and local radio multiplex services. The Explanatory Notes state:

18. The delineation of small scale radio multiplex services from local (county sized) multiplexes can be achieved by a two-step test

⁹ Ibid, para 1.7

¹⁰ The licences were extended for a further two years (Ibid, para 1.8)

¹¹ Ibid, para 1.10

¹² It is a [Presentation Bill](#), meaning it was introduced without debate in the House of Commons

¹³ [Explanatory Notes to the Broadcasting \(Radio Multiplex Services\) Bill 2016-17](#), 9 January 2017, para 2

¹⁴ The regulation of broadcasting is a reserved matter. A table on page 8 of the Explanatory Notes summarises the Bill's territorial extent and application in the UK

to be set out in the Order. In an area that is currently served by a county-level local radio multiplex the small scale radio multiplex service can cover up to a maximum percentage of that area, likely to be set at around 40%.

19 In the event that there is no current local radio multiplex in operation in an area, Ofcom could also offer and issue a small scale radio multiplex licence to cover an area with reasonable reception up to a maximum level in square kilometres. This would potentially enable multiplex broadcasting within certain areas, such as Shropshire and Cumbria, which do not currently have a county-level local radio multiplex licensed service because of a lack of commercial viability.

20 Overall, the intention is to create a three tier system of radio multiplexes: national multiplexes for UK-wide transmission, local radio multiplexes for county-level transmission, and small scale radio multiplexes for sub-county level transmission or wider transmission where there was no existing local multiplex licensee.

Clause 1(3) would enable the Secretary of State to make an Order modifying the regulatory framework for the licensing of radio multiplex services. **Clause 1(4)** sets out some of the purposes for which the power could be used. The Explanatory Notes state that these could include:

- a. allowing for the licence periods for small scale radio multiplex services to be set according to the needs of small stations who will seek carriage on them rather than (as at present for local radio multiplexes) for a fixed period of 12 years, which is inappropriate given the much smaller capital outlay needed to set up and operate a small scale radio multiplex service.
- b. allowing for the exclusion of the BBC and other organisations with any existing licence holders in either the national or local radio multiplex services from holding a small scale radio multiplex licence.
- c. enabling requirements to be placed on small scale radio multiplex service licensees to operate on a non-commercial basis to ensure access for small commercial and community radio stations.
- d. allowing for a duty on Ofcom to have regard to the effect of granting a small scale radio multiplex service licence on existing or potential local multiplex licence holders. This will help to address concerns that some existing local (county-sized) radio multiplexes may be rendered financially unviable by adjacent small scale radio multiplex licences which can better target the audiences desired by smaller stations.
- e. allowing for Ofcom to be able to include in small scale multiplex service licences conditions requiring that community radio stations (as a class) have rights of carriage on the multiplex.
- f. allowing for Ofcom to reserve a set percentage of capacity on the multiplex for such purposes.
- g. allowing radio stations holding a local Digital Sound Programme (DSP) licence or a modified community radio local DSP licence (if introduced) to broadcast on new small scale radio multiplexes - i.e. to amend the definition in s60(1)(b) of the 1996 Act to clarify that a local or community radio DSP licence includes broadcasting by means of a small scale multiplex. This will mean that commercial stations currently holding a local DSP licence will

not have to apply for a new type of service licence, and community stations currently broadcasting only on analogue will be able to obtain an appropriate digital licence to enable them to be carried on local or small scale multiplexes whilst, if such an order is made, retaining their existing licence requirements as community radio stations.¹⁵

Under **clause 1(5)**, an Order made under the new section could make different provision for different cases to deal with the interaction between small scale radio multiplexes and local radio multiplexes:

Ofcom will be placed under a duty to consider the effect of granting a small scale radio multiplex service licence on existing local multiplex licence holders already covering the area that will be covered by a prospective small scale multiplex. This will allow Ofcom flexibility in the licensing of small scale multiplexes, for example by varying size of the area covered to ensure that the small scale multiplex is compatible with the needs of stations seeking digital transmission in a particular area of the country.¹⁶

Under **clause 1(8)**, any Order made under the new section would be subject to the affirmative resolution procedure (i.e. it would require the formal approval of both Houses of Parliament).

3. Debate in the Commons

3.1 Second reading debate

The Bill had its [second reading](#) on 13 January 2017.

Dr Rosena Allin-Khan (Shadow Minister for Sport) said that Labour supported the Bill. However she raised a number of issues:

(...) the Bill draws specific attention to rural areas where there are currently no local multiplexes. We have heard many examples of how they would be welcome throughout the country, but the Ofcom trial on which the Bill is based used 10 locations, all of which were cities, from Glasgow to Manchester and Cambridge. I understand that the trial used pre-existing radio services and so could not take place in areas without local radio multiplexes, but the disparity between the stated aim of the Bill and the scope of the trial on which it is based requires further exploration.

Radiocentre, the industry body for commercial radio, has expressed concern that the measure prohibiting anyone with an interest in a national or local multiplex from gaining a small-scale DAB licence could negatively impact rural areas, particularly where it is possible that no other operators would be interested. Will the Minister tell us whether the DCMS consultation will specifically address the feasibility of the programme in rural areas?...

(...) The Bill has been presented as an opportunity for [smaller commercial radio and community] stations, but in "Small-scale DAB trials: final report", from September 2016, Ofcom notes that although

"it should be technically possible to develop a frequency plan for small scale DAB which might accommodate those stations...much more detailed planning and optimisation work would be required

¹⁵ [Explanatory Notes to the Broadcasting \(Radio Multiplex Services\) Bill 2016-17](#), 9 January 2017, para 22

¹⁶ *Ibid*, para 23

to develop a frequency plan which could be implemented in practice.”

The House will not want to pass the Bill until it knows that it can be implemented in practice. Will the Minister tell us what plans have been made to address those uncertainties?...¹⁷

Dr Allin-Khan also asked whether a small-scale multiplex would only be operated on a non-commercial basis:

(...) Uncertainty about this has caused some concern among stakeholders. Radiocentre appreciates that the aim is to keep the costs of carriage as low as possible, but will this prevent a commercial operator from holding such a licence? Will commercial radio stations be able to broadcast on the multiplex? The Community Media Association has also expressed concern about the Bill's ambiguity in this area, although it, like Radiocentre, is supportive of the Bill in general. In the light of that, what measures will be taken to ensure that the licensing of small-scale multiplexes promotes healthy competition without crowding out existing local services?...¹⁸

Other issues raised by Dr Allin-Khan included the skills and knowledge needed to capitalise on the opportunities offered by the Bill. She also asked whether there would be funding for new small-scale radio services.¹⁹

Matt Hancock, the Minister for Digital and Culture, replied:

[The matter of rural areas] was addressed in the trials, and in Ofcom's response to the trials. We will go through the technical details that will lead to the orders in a further consultation...

On the frequency plan, the hon. Lady seemed to imply that it was not possible to vote in support of the Bill until that plan was in place. I caution her against such an approach, as the process has already started. The frequency trials were very positive. Of course further consultation will address the technical details, but those technical details are a matter for the orders and statutory instruments that follow the Bill rather than the principles that we are debating today. The same is true about the comments made by Radiocentre and the Community Media Association. Those are matters for the regulations.

The hon. Lady rightly raised the matter of skills. The Ofcom report was clear that the trials delivered exactly the sorts of skills that we should be looking for in this space. She also talked about money...in this spending review period funding for community radio support was increased and guaranteed out to 2020...this Bill is ultimately a permissive piece of legislation: it is about allowing people to do things that, currently, they cannot do...

[On] the matter of public only or public and private...this Bill...does not require either public or private backing. However, there is an important balance to be struck in the consultation, which is that, ultimately, small-scale digital radio is about enabling communities and community support. We do not want it to be completely gobbled up by large commercial providers for whom

¹⁷ [HC Deb 13 January 2017 c625](#)

¹⁸ [HC Deb 13 January 2017 cc626-7](#)

¹⁹ [HC Deb 13 January 2017 cc625-6](#)

there are other options. We want to ensure that there is space for the innovative and for the very small...²⁰

3.2 Public Bill Committee

The Bill was [considered](#) in Public Bill Committee on 31 January 2017. No amendments were tabled to the Bill. There was a general debate about the contents of the Bill on the question that clause 1 stand part.

During the debate, Kevin Brennan (Shadow Minister for the Arts and Heritage) said he hoped Mr Foster's Bill would make it into law.²¹ However he discussed a number of issues raised with the Opposition by the Community Media Association (CMA).²² According to Mr Brennan, the CMA wanted amendments to be tabled but they were not ready in time.²³ The CMA would have liked to propose that:

(...) "small-scale radio multiplex services be required to operate for public and community benefit rather than for commercial reasons in order to favour existing community radio providers or consortia of small-scale local and community media to come together to operate the multiplex...[that] would not preclude a...local commercial radio service from playing a lead role in establishing a not-for-profit vehicle to hold the multiplex licence and to operate it on such a basis that local radio services, including small-scale commercial radio services, are provided with free or low cost carriage, and that any surpluses generated are invested in local content production."²⁴

The CMA was also concerned about the possible multiple ownership of small-scale radio multiplexes. In the CMA's view, multiple ownership "is likely to lead to uniformity of content, a higher proportion of non-local content and the use of multiple small-scale multiplexes for the provision of quasi-regional services or, at the national level, the cherry-picking of the most profitable locations by a limited number of operators."²⁵

Kevin Foster responded:

(...) Many of the details that the Community Media Association has raised are items that would be considered, clearly, in the detail of the consultations on the orders and in individual licence applications. We do not want to set too rigid a framework by Act of Parliament that could end up with applications that could have made real sense at a local level being stymied.

On whether one person can hold more than one small-scale DAB multiplex licence, the detail of how the new licensing regime should operate will be subject to full consultation and set out in any order...

I understand that ownership of a small-scale DAB licence will be included for consideration in the Government consultation on the detailed licensing and regulatory arrangements. There are likely to be other views on the number of licences that each person can hold, and on the availability of small-scale multiplex licences to commercial organisations. At this stage it is important not to

²⁰ [HC Deb 13 January 2017 cc634-5](#)

²¹ [Public Bill Committee 31 January 2017 c5](#)

²² The CMA is the UK membership association for community broadcasting

²³ [Public Bill Committee 31 January 2017 c5](#)

²⁴ [Public Bill Committee 31 January 2017 c7](#)

²⁵ [Public Bill Committee 31 January 2017 c7](#)

prejudge the consultation or the views of other stakeholders by amending the Bill in this regard.

It is worth noting that the whole purpose of the Bill is to have a light touch and a framework that allows innovation and change, and not to set too much in stone in an Act of Parliament...²⁶

The Minister, Matt Hancock, again said that the Government supported the Bill and supported “everything” that Mr Foster had said:

(...) We have heard arguments both on Second Reading and in Committee in favour of having small independent commercial operations being able to take advantage of this Bill, as well as making sure there is enough protection to allow community stations that are not profit-making to make use of it. We will take all of those arguments into account. The Bill does not set the final position on restrictions for holding small-scale DAB licences and does not contain stipulations about licence ownership or operating on a commercial basis.²⁷

The Bill was reported without amendment. It will have its remaining stages in the House of Commons on 3 February 2017.

²⁶ [Public Bill Committee 31 January 2017 c9](#)

²⁷ [Public Bill Committee 31 January 2017 cc10-1](#)

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