



Review of music in radio Formats

Statement

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Contents

Section		Page
1	About this document	3
2	Executive summary	4
3	Background	6
4	Responses on the options and Ofcom's decision	9
5	Other issues raised in consultation responses	14

Section 1

About this document

- 1.1 We published a consultation in January 2015 on whether the way that the selection of music played by local analogue commercial radio stations is regulated is still appropriate, and asked for views on three options.
- 1.2 We confirm our proposal to allow certain synonymous descriptions to be simplified in to “mainstream popular music” without the need to consider any such changes in accordance with the statutory Format change process. We also provide guidance on how specialist music descriptions could be similarly simplified. It would be for the licensees concerned to ask for the music descriptions in their licences to be simplified in these ways, should they wish to do so.

Section 2

Executive summary

2.1 Ofcom has a statutory duty to do all it can to secure a range and diversity of local analogue radio services. We do this in part by including in each station's broadcast licence a description of the service it must provide, which is based on the proposals the licensee made when it applied for the licence. This description is known as a 'Format', and in most cases one of the key elements is the type of music that the station must play.

2.2 We published a consultation in January 2015 on whether the way that we regulate the selection of music played by local analogue commercial radio stations is still appropriate, and asked for views on three options:

- 1) **No change.** The selection of music in Formats would remain as proposed by the licensee at the time of licence award, subject to any changes approved under the Format change process.
- 2) **Simplification of the Formats of stations playing "mainstream popular music".** We considered certain existing non-specialist music genre descriptions (e.g. 'Contemporary' or 'Pop' music) were synonymous and could be simplified to a single "mainstream popular music" description under our general licence variation powers.
- 3) **High level Formats.** Ofcom could allow licensees to request to change the music element of their Format to be either: Genre-led, specifying a specialist genre of music; or Audience-led: specifying music for a particular target audience profile (e.g. age or ethnicity).

2.3 We received 11 responses to the consultation, which have been published on our website.¹ Two respondents, UTV and UKRD, supported Option 1, as they considered that the other options risked eroding the range and diversity of local radio services. Global Radio, Town and Country Broadcasting and Bauer Radio argued for greater flexibility for licensees and endorsed the response from RadioCentre, which proposed an amended version of Option 2 with a wider definition of what constitutes "mainstream popular music" (or perhaps 'broad music') station and shorter specialist formats." Option 3 was supported by two individuals, but considered problematic by industry stakeholders.

2.4 Having carefully considered all of the responses, we have decided to implement a slightly amended version of the Option 2 which was set out in the consultation. We confirm the simplification of descriptions for "mainstream popular music" are those we set out under Option 2 in the consultation:

Top 40, Contemporary Hit Music, Current Hits, Adult Contemporary (AC), Contemporary, Soft Contemporary, Soft AC, Hot AC, Soft Pop, Melodic AC, Adult hits, New Music, Varied Music, Chart Music, Pop, Adult-oriented pop, Mainstream Music.

¹ <http://stakeholders.ofcom.org.uk/consultations/formats-review/?showResponses=true>

- 2.5 We would also allow for stations with a specialist music description in their Format to request that this is simplified where it does not change the core character of the service. We consider this could be possible in many Formats, and have provided examples where we consider descriptions could be simplified to “rock”, “rhythmic” or “classic/gold”. Together with the simplification to “mainstream popular music”, this should allow for the majority of music descriptions in Formats to be simplified, should a licensee wish to do so.
- 2.6 We consider that this approach will ensure that we continue to meet our statutory duties in this area, while allowing many licensees to simplify their music descriptions to allow for greater flexibility in meeting those obligations. However, it is our view that including specialist genre descriptions such as “rock”, “dance” and “easy-listening” as “mainstream popular music” would allow stations to change their character of service without it being considered in accordance with the statutory Format change process, which would not be consistent with our statutory duties.
- 2.7 In the consultation we set out our view that the “mainstream popular music” description could be made to relevant Formats as a general licence variation. We did not mean by this that any such variations would be imposed on relevant licensees without their consent. Therefore, for the avoidance of the doubt, it will be for a licensee to request a variation to their Format should they wish to simplify their music description in line with the policy outlined above. Any such changes will not be considered by Ofcom to represent a change to the character of the service in question, and thus the change will be approved without the need for it to be considered in accordance with the statutory Format change process, and will be effected using our general licence variation power.
- 2.8 The same will apply to any specialist music station that wishes to simplify the music description in its Format, provided we do not consider that any such simplification would in fact represent a change to the character of the service (in which case it would need to be considered in accordance with the statutory Format change process).
- 2.9 Our decision reflects our view of what flexibility is possible within the current statutory framework which requires that we do “all we can” to secure a range and diversity of local analogue radio services and requires that we include reference to the selection of music in licences. We recognise, however, that this statutory framework was established 25 years ago, when listeners had access to far less choice of music services, and that there may be a case for Government and Parliament to consider whether the current framework remains appropriate in light of changes in the market and listener behaviour.

Section 3

Background

Regulation of music in local analogue commercial radio licences

- 3.1 In most geographic areas, the radio spectrum used for FM and AM analogue radio services only allows for a limited number of services to be broadcast. Ofcom awards licences to services to broadcast following a competitive ‘beauty contest’ for each licence. Under section 85 of the Broadcasting Act 1990 (BA1990) Ofcom is required “do all that they can to secure the provision within the United Kingdom of a range and diversity of local services”.
- 3.2 In order to help Ofcom comply with this statutory duty, we are required to include conditions in each licence that we grant for a local radio service to ensure that the licensee delivers the type of service it proposed to provide when it applied for its licence (or any approved amendment to this which it has proposed). This is known as the ‘character of service’. One of the elements which define the character of service of most local radio stations is the selection of music included in the service.
- 3.3 In order to secure the character of service, each licence for a local analogue commercial radio service includes a description of the service, including the selection of music that the station must play, and a condition requiring the licensee to provide the service in accordance with that description. We call the part of a licence which includes this information the ‘Format’.
- 3.4 There is a wide range of music descriptions in the Formats of currently licensed services, from general descriptions such as ‘Broad music’ to more specialist genre descriptions such as ‘Dance’ or ‘Rock’.
- 3.5 Any local analogue commercial radio station can at any time ask to change its Format. Ofcom can only agree to such changes if certain criteria specified in statute are met.

Call for inputs and consultation

- 3.6 The ways in which music is consumed, and the tastes and interests of listeners, continue to evolve with the development of new types of audio services. While the research available suggests that for listeners the importance and value of, and satisfaction with, music on local commercial radio remains very highly rated, there is emerging evidence that, in general, blurring in both artist output and listeners’ tastes may be making some traditional music genre descriptions less relevant, and that increasingly tastes in music cut across different audiences and age groups.
- 3.7 We therefore decided to review whether there may be scope within the current statutory framework for, and benefits to listeners from, further changes in the way we regulate the music played by local analogue commercial radio stations.
- 3.8 To help inform the proposals in the consultation document, in May 2014 we published a Call for Inputs seeking preliminary views and supporting evidence.² The 13 responses

² <http://stakeholders.ofcom.org.uk/consultations/music-formats-cfi/>

we received expressed sharply diverging opinions on the effect of market changes; the need for services to have greater flexibility in music selection; and whether a change to the current regulatory approach was feasible or desirable.

- 3.9 We did not consider that, as suggested by some respondents, all music requirements could be removed from Formats, or that all stations could have a Format which simply stated 'broad music', as neither of these suggestions would be compatible with the current statutory framework.
- 3.10 However, we considered the extent to which we could propose a revision to the current regulatory approach which is consistent with the statutory framework but which offers greater flexibility to radio stations in terms of their selection of music. We identified three options:
- 1) No change. This would leave current Formats unchanged.
 - 2) Simplification of the Formats of stations playing "mainstream popular music". We consider certain non-specialist music genre descriptions (e.g. 'contemporary' or 'pop' music) could be simplified to "mainstream popular music". Formats specifying specialist music genres (e.g. Rock, Dance) would remain.
 - 3) High level Formats. Ofcom could allow licensees to request to change the music element of their Format to be either:
 - a) Genre led, specifying a specialist genre of music; or
 - b) Audience led, specifying music for a target audience profile (e.g. by age group or ethnicity).
- 3.11 We considered that Option 1 retained an appropriate balance between licensees' desire for flexibility in music selection while enabling Ofcom to continue to fulfil its statutory duty to secure a range and diversity of services for listeners.
- 3.12 We considered Option 2 would enable the rationalisation of a range of different descriptions in Formats which currently exist but which are essentially synonymous with mainstream popular music. We considered the option would allow around 26% of licensees to amend the music description in their Format without changing their character of service, and would represent a clearer and more consistent approach for listeners and licensees alike.
- 3.13 Option 3 represented what we consider to be the most deregulatory option available under the current statutory framework. We considered implementation of this third option would require Ofcom to monitor closely the extent to which there continued to be meaningful distinctions between stations in terms of their selection of music, and securing compliance with an audience-led Format would represent a particular challenge.
- 3.14 The specific questions for consultation were:

Consultation question 1

- a) Which of the three options outlined in this consultation document, if any, do you consider would best meet the needs of both listeners and licensees? Please explain the reasons for your view.
- b) Do you agree with the simplification of descriptions we propose under Option 2, and classifications we propose under Option 3? If not, please explain the reasons for your view and provide alternative wording.

Consultation question 2

If you think there are other options which would be consistent with the statutory framework, please provide details and explain the reasons for your view.

Section 4

Responses on the options and Ofcom's decision

- 4.1 We received 11 responses to the consultation from: Bauer Radio ("Bauer"), Global Radio ("Global"), Town and Country Broadcasting ("Town & Country"), UKRD Group ("UKRD"), UTV Media (GB) ("UTV"), RadioCentre (the trade body)³, the All Party Parliamentary Group for Commercial Radio ("APPG") and four individuals. All of the responses have been published on our website.⁴
- 4.2 Below we summarise the responses and Ofcom's views on these, and our final decision on the regulatory approach.

Responses on options

Responses to question 1

- 4.3 UKRD, UTV and one individual supported Option 1 only and considered that the current descriptions used in Formats should remain unchanged. UKRD considered that "with a regulatory duty to ensure that range, diversity and localness sit at the heart of decision-making, it is difficult to argue with any conviction that this can be delivered by further erosion of format obligations when it comes to music or, for that matter, anything else".
- 4.4 UTV stated that it did "not propose any other options other than the current music format descriptions and believe no changes should be made." UTV did "not agree with the second option of simplifying the description of non-specialist music formats. The non-specialist genres identified by Ofcom all have a subtle distinction and the removal of these to a one-size-fits-all category will only serve to homogenise the music offering of local commercial radio as stations fight it out for a share of the most attractive commercial audiences, which will by definition narrow the range and diversity of services contrary to Ofcom's statutory duties."
- 4.5 One individual supported Option 1 "simply because the other two could substantially adjust characters of service...and even more stations will get away with things that listeners don't want."
- 4.6 Global and RadioCentre argued actively against Option 1.
- 4.7 Global claimed that "the current regime is overly burdensome on licensees". It also noted that while two operators had argued in their response to the Call for Inputs that the regulatory approach should remain unchanged, it considered "both these groups operate predominantly "broad music" local stations which are not, by definition, subject to detailed regulation of music formats." It also stated its view that "the purpose of the regulatory regime is to protect listeners, not to limit competition between stations or favour the commercial interests of one operator over another."

³ Radio Centre states that it represents members that account for 90% of commercial radio listening hours and revenues.

⁴ <http://stakeholders.ofcom.org.uk/consultations/formats-review/?showResponses=true>

- 4.8 RadioCentre stated that “we do not believe that this option (1) would be consistent with the original basis of this review which was ‘to see if these (rules) can be relaxed to give the industry greater freedom to adapt to changing consumer tastes’.” It considered that there was evidence of market changes affecting the radio industry including access to music due to the growth of digital music services; expansion of choice due to changes in the radio market; and the blurring of musical genres making artists or tracks harder to define. It stated that in this context “it would be an odd outcome if the conclusion was to make no change.”
- 4.9 RadioCentre proposed “a variation of Option 2 by adopting a wider definition of what constitutes a ‘mainstream popular music’ (or perhaps ‘broad music’) station and shorter specialist formats.” They asked Ofcom to consider the option for a broader range of stations to be included within the definition of mainstream popular music – including those that are currently categorised as ‘rhythmic/ dance’, ‘classic/ gold’ and ‘rock’. RadioCentre argued that this would be a logical approach as the music on these stations is “mainstream and synonymous with UK charts for the sale, download or streaming of music.”
- 4.10 Bauer and the APPG supported Radio Centre’s proposal as it “would broaden the definition of ‘mainstream popular music’ (or ‘broad music’) to include more stations, while also providing the option for specialist music stations to adopt shorter and simpler formats.”
- 4.11 Global echoed RadioCentre’s suggestion of a modified Option 2 under which stations with Format descriptions such as “rhythmic” or “dance” should also be simplified to “mainstream popular music” as it considered that there was “no meaningful distinction between these”. Town & Country supported RadioCentre’s proposal but argued that “gold and easy stations” should also be considered to be mainstream popular music.
- 4.12 Two individuals supported Option 3. One individual considered that “out of date music format restrictions prevent it (local radio) from competing with the future threat from such online services.” RadioCentre considered that Option 3 was not a credible option on the basis that “implementation and compliance would be problematic and the benefits to audiences are unclear and difficult to quantify.”

Responses to question 2

- 4.13 Global stated that it “would support further deregulation of music formats to permit all licensees including those with so-called specialist formats to benefit from the same flexibility to change their music positioning to reflect changes in consumer taste.” It considered that stations with specialist music formats should be able to apply to simplify their formats (and that Ofcom has the flexibility to approve such changes without consultation) but that such stations would still have to comply with the essential character of service and remain committed to a particular genre of music and target demographic.
- 4.14 RadioCentre considered that specialist music stations should have the option to “simplify their format and have greater flexibility in how they deliver their character of service”. This could be achieved, it said, “by Ofcom enabling specialist music stations to remove any excessive detail from their formats, but continuing to refer to a specific music genre and target audiences.” It considered that the re-categorisation of stations should not be mandatory, but that services should have the option to A) move to a mainstream popular music/ broad music definition; B) provide a simplified specialist

- music genre (with a shorter description of genre and target audience); or C) make no change to their existing format.
- 4.15 RadioCentre considered that if Ofcom required additional reassurance regarding its compliance with its statutory duties (and the range and diversity of output across the sector) it may be helpful for it to conduct a further consultation to ascertain which local commercial radio stations intend to follow each option.
- 4.16 Town & Country argued that there should be no regulation of music for local commercial services, and that “commercial stations should be solely regulated on their promises and provision of local content”. One individual advocated “more local programming” on services.
- 4.17 One individual considered that the description of music played made at the time of licence award should be removed and that “it should be incumbent upon the regulator to see through the puffery and promises attached to any licence advertising process, and distil the contents to a basic core provision.”
- 4.18 One individual put forward a proposal based on Option 3 to “create a simplified, easier to regulate three-tier radio system of services” of 1) general-audience mainstream services playing broad music; 2) mainstream services widening the range of services in the locality; or 3) specialist music services to broaden the range of music formats.

Ofcom’s view on the responses

- 4.19 We understand the desire for licensees to be able to amend and adapt their programming output in accordance with changing consumer tastes and behaviour. However, the extent to which we are able to provide this flexibility is constrained by the statutory scheme to secure the character of service proposed by the licensee, which we must apply in line with our duty to secure a range and diversity of local services for listeners.
- 4.20 We had explored under Option 3 whether – at the furthest extent of the current statutory framework – the flexibility that could result from Formats which describe the selection of music by reference only to its target audience would be wanted by licensees. In the consultation (paragraphs 5.60 to 5.65) we identified a number of implementation and compliance issues regarding Option 3. We note that respondents were broadly in agreement that Option 3 would be problematic, and that they did not consider it would be a feasible or desirable option.
- 4.21 We note that UTV and UKRD supported Option 1 on the basis that this would mean no changes would be made to Formats. However, the existing approach, which Option 1 would continue, already allows for licensees to request changes to Formats. We would therefore disagree with this justification for Option 1.
- 4.22 We consider that the simplification of descriptions of “mainstream popular music” we proposed under Option 2 would allow for greater flexibility for licensees while maintaining the existing range and diversity of services. We do not agree with UKRD and UTV that implementation of Option 2 would reduce the range and diversity of services, or that it would result in any more or less competition between stations than exists already.
- 4.23 However, we also do not agree with the proposal by some respondents that a “mainstream popular music” description should incorporate a wider range of music

descriptions including “rock”, “rhythmic/dance”, “classic/gold” and “easy listening”. While we accept that these genres may overlap with what is mainstream or popular at a given point in time, we consider these music genres are recognised by listeners and the wider industry as being distinct and relating to a particular type of music. The descriptions therefore help to provide for a range and diversity of services. It is our view that if a station with a Format that includes one of these music genres were to change to “mainstream popular music” it would represent a change to the character of the service. Under the statute, any such change must be considered as a Format change request and in line with the statutory process.

- 4.24 RadioCentre’s proposal would have the effect of increasing the number of licences which potentially could use the simplified “mainstream popular music” description in their Format from 26% of licences to 63%, with the majority of the remainder being “broad music”. This would theoretically allow almost all local commercial radio licensees, and multiple licensees in the same local markets, to play the same type of music. Although in practice there may still be some variety delivered by stations due to different brands and their target markets, this diversity would no longer be guaranteed by the licence conditions. We do not consider that this would be consistent with our statutory duty to “do all we can to secure a range and diversity of local services”.
- 4.25 We note the view that licence requirements should be based on local programming only, or distilled by Ofcom based on licence applications. It is a requirement of the legislation that licence conditions in relation to the character of service derive from the proposals that the Licensee puts forward in terms of the selection of music and spoken material to be included in its broadcast service. Ofcom is not able, under the current statutory regime, to limit them only to local programming unless that is the service proposed.
- 4.26 We consider the proposal to have a tiered system of different services is an interesting one. Ofcom is not able to mandate the selection of music or amount of local programming for a given service in a given market in the way proposed. However, we note that over time the current licensing approach and its requirement to add to the range and diversity of services has led to a mix of specialist music and mainstream popular services (with a focus on local programming) being proposed by licensees. We note Option 2 would continue the distinction between stations with a “mainstream popular music” format and those with specialist music formats sought in the proposal.

Ofcom’s decision on options

- 4.27 Having carefully considered all of the responses, we have decided to implement a slightly amended version of the Option 2 which was set out in the consultation. We confirm the simplification of descriptions for “mainstream popular music” are those we set out under Option 2 in the consultation:

Top 40, Contemporary Hit Music, Current Hits, Adult Contemporary (AC), Contemporary, Soft Contemporary, Soft AC, Hot AC, Soft Pop, Melodic AC, Adult hits, New Music, Varied Music, Chart Music, Pop, Adult-oriented pop, Mainstream Music.

- 4.28 This excludes any other descriptions, including “rock”, “dance”, “easy-listening” and “classic/gold” as proposed by some respondents. While we consider these are distinct genres that differentiate these services from each other, we note the views of respondents to question 2 that within each of these specialist genres there are variations that could be made to some relevant Format descriptions which would not affect the character of the stations in question and therefore would not reduce the current range and diversity. We therefore will also allow stations with a specialist music

description in their Format to request that this is simplified provided it does not change the core character of the service.

- 4.29 By way of guidance, we consider simplifications could be made where descriptions are similar to each other, or are variations within a specialist genre where the individual variations do not materially influence the character of service relative to other services. We have looked at some of the specialist music descriptions currently used in Formats, and consider this may be the case in the following examples:

“Rock”: *Guitar-led, Alternative Rock, Soft Rock, Classic Rock, Contemporary Rock, Modern Rock.*

“Rhythmic”: *Dance, Dance Classics, Contemporary Dance, Rhythmic-based, Rhythmic contemporary, Urban.*

“Classic/Gold”: *Classic music, Classic oldies, Gold, Pop classics.*

- 4.30 We anticipate that the music descriptions in each grouping above could be simplified to the description in **bold** without it constituting a change to the character of the service. For example, a service with a music description of “contemporary dance” could substitute this wording with “rhythmic”.
- 4.31 This should allow for the majority of music descriptions in Formats to be simplified, should a licensee wish to do so. We consider other music descriptions currently included in Formats, including “easy listening” and other specialist or ethnic music descriptions, are distinctive in their own right and could not be further simplified without there being a change to the character of service.
- 4.32 In the consultation we set out our view that the “mainstream popular music” description could be made to relevant Formats as a general licence variation. We did not mean by this that any such variations would be imposed on relevant licensees without their consent. Therefore, it would be for a licensee to request a variation to their Format should they wish to simplify their music description in line with the policy outlined above. Any such changes will not be considered by Ofcom to represent a change to the character of the service in question, and thus the change will be approved without the need for it to be considered in accordance with the statutory Format change process, and will be effected using our general licence variation power.
- 4.33 The same will apply to any specialist music station that wishes to simplify the music description in its Format, provided we do not consider that any such simplification would represent a change to the character of the service (in which case it would need to be considered in accordance with the statutory Format change process).
- 4.34 Any proposed changes which fall outside this policy on music descriptions - for example, seeking to change from ‘dance’ to ‘mainstream popular music’, or from ‘rock’ to ‘easy listening’ – or to change any other wording in the Format would, as now, be Format change requests to be considered under the process set out in section 106 of the Broadcasting Act 1990.

Section 5

Other issues raised in consultation responses

Timetable for consultation

- 5.1 RadioCentre considered that “the consultation process on music formats has been slower than anticipated, with formal proposals only being published as part of the current consultation in January 2015, more than a year after the review was announced by the Minister.” The APPG stated that it was “unclear exactly why it took 5 months to initiate this process and then a further 8 months to launch a full consultation.”
- 5.2 We do not consider the process has been slower than anticipated. We have progressed this matter as promptly as was practicable in considering all available evidence and stakeholder views and to allow for public consultation on these and our options.

Listener research and benefits

- 5.3 RadioCentre considered that there is no evidence, and that Ofcom had not conducted primary research, that the current approach to regulating music in Formats benefitted listeners.
- 5.4 We had invited evidence as part of the Call for Inputs, but no respondent provided listener research. For the consultation, we considered that bespoke research to justify an existing regulatory approach determined by legislation is not appropriate.
- 5.5 We disagree with the assertion that there is no evidence of benefits to listeners. In the consultation (paragraphs 4.41 to 4.45) we set out that the research available suggests that the importance, value, satisfaction and role of music on local commercial radio remains rated very highly by listeners. We also considered the benefits and costs to listeners of each option including the current approach. We also note that no respondent provided evidence that the current approach does not benefit listeners.

Treatment of responses to the call for inputs

- 5.6 RadioCentre considered that “Ofcom took the unusual step of issuing a Call for Inputs in May 2014. It received 13 responses to this initial phase. The way in which Ofcom represents these arguments implies that the commercial radio industry and other respondents are evenly split in their approach to this issue. RadioCentre is concerned that this assessment (and the way these opinions are represented in the consultation document) fails to reflect fully the views of commercial radio operators and the role of an industry body in collating and submitting these views.”
- 5.7 The Call for Inputs was designed to allow any interested party to provide evidence or raise issues that they considered relevant to the review. Ofcom often uses this process in order to assist the formulation of policy options for consultation. Any responses to a call for inputs are considered on their merits, and were presented as such in the consultation document.
- 5.8 The responses to a consultation in which potential options, and their impact, are relevant to particular licence holders are clearly different to views expressed in a call for

inputs. RadioCentre's response to this consultation has been taken as the collective response from its members on their views and potential impact of the options set out.

Definition of music genres and types and Ofcom's role

- 5.9 One individual suggested that Ofcom should keep the descriptions proposed under Option 2 and Option 3 under review, "since what might seem sensible now, such as 'Pop' or 'Rock' are genre descriptions which can be altered and changed over time with the change of music over time." Another individual considered that "to pretend that a few well-chosen words can adequately, or even usefully define formats, confronts good logic."
- 5.10 RadioCentre provided research it had commissioned and stated that "it is clear from this research that the current system makes little sense to audiences. The terminology used by Ofcom...do not reflect the way that the majority of listeners perceive or describe the music they hear." RadioCentre considered that "the use of stock phrases and words to describe music has always been problematic and open to interpretation, but it is now becoming questionable whether this can remain a sensible way to regulate increasingly complex musical styles with multiple influences."
- 5.11 RadioCentre also stated that "another important finding from the research was that only 4% of commercial radio listeners think that Ofcom should determine the types of music played on a commercial (non-BBC) music radio station, compared to 51% who think that it should be the radio station that determines these decisions. This would also suggest that a regulatory system that has Ofcom as the key arbiter of music output has a very low level of support and requires significant reform."
- 5.12 The APPG stated that "in each of the (options) put forward it is Ofcom, as the industry regulator, that will remain responsible for defining and enforcing specific music formats for local commercial radio."
- 5.13 In considering the options outlined, RadioCentre considered that "it would be helpful if (Ofcom) clarified exactly which licensed stations it is proposing to come under the new definition (and published an accompanying list of stations that it considers falls under each category)" and "outline the precise wording that it is proposing to use as part of this new character of service for 'mainstream popular music.'"
- 5.14 We acknowledge that some music genres are becoming increasingly difficult to delineate. The music descriptions in Formats are as proposed by the licensees themselves as part of their application for a licence and it is open to them to request a change to the wording of their description should they wish to, either through the Format change process or, if there is no impact on the character of service, under our general power of variation.
- 5.15 As set out in the consultation (paragraphs 3.4 to 3.7) Ofcom awards licences based on the character of service and selection of music proposed, or subsequently amended, by licence holders. Other than to incorporate this music description in the licence and ensure that the output of a station is consistent with it, Ofcom has no role in determining or defining the types of music or different tracks that can or cannot be played.
- 5.16 The research cited by RadioCentre in its response to the consultation is therefore based on an incorrect supposition. Ofcom is not "the key arbiter of music output" or "responsible for defining music formats for local commercial radio". We have assessed these findings in this context.

5.17 In this statement we have set out the music descriptions currently in use which we consider could be simplified to “mainstream popular music”, or to a description of either “classic/gold”, “rock” or “rhythmic”. As it is for relevant licensees to decide whether or not they want to request such a variation of their Format, we therefore have not listed the stations to which any changes could apply.

Ofcom’s discretion in its statutory duties

5.18 RadioCentre argued that Ofcom has discretion to proceed to “greater liberalisation” by adopting a “broader music definition”. It provided legal advice it has commissioned that states “there are at least three possible rationales that could enable Ofcom to proceed with greater liberalisation:

- i) “Discretion over music genre descriptions – The format categories and their meaning are not defined in legislation, so Ofcom can decide what these genres mean or include. As such Ofcom could consent to widened definitions, without this being a substantial departure.
- ii) Reasonable view that range and diversity would be retained – Ofcom could also move to a broader music definition on the grounds that there was reasonable evidence that a range and diversity of music would be retained.
- iii) Maintaining fair and effective competition – Ofcom could change formats to [a] broader music definition if they reasonably considered there to be a long-term threat to radio from unregulated services.”

5.19 The APPG considered that “there is nothing in the current statutory framework that requires Ofcom to continue to regulate by using written descriptions of music formats.” It considered that “the legislation allows for significant discretion in this area, which could help radio stations compete more effectively with new online services and react more effectively to the needs and demand of listeners.”

5.20 We have considered very carefully whether there is scope within the current statutory framework to deregulate in the ways suggested by both RadioCentre and the APPG, and have concluded that we do not have such discretion.

5.21 The current statutory framework under the Broadcasting Act 1990 requires Ofcom to “do all they can” to secure a range and diversity of local radio services and to include conditions in local radio licences to secure the character of service (namely the selection of music and speech) that the licensee proposed in its licence application. We consider the combination of these regulatory duties necessitate the continuation of some kind of Format regulation based on music descriptions. We do not think there are any other ways in which we could meet our statutory duties in this area, and note that, though asked in question 2, no others were proposed in the responses.

5.22 As noted above, music genre descriptions are not defined by legislation. The Formats included by Ofcom in licences are based on the descriptions used by licensees in their applications or as subsequently amended. It is for the licensee to decide what music to play that complies with the description it has provided. As set out in the consultation (paragraphs 3.40 and 3.41), Ofcom has a duty to ensure that stations comply with their licence conditions, and we note that there have been only five occasions in the last eight years when we have needed to investigate whether a station is complying with the music element of its Format.

Future legislative change

- 5.23 Bauer and the APPG both considered that “in the long term it may be that the legislation governing this area still requires further amendment to reflect market changes and differences in consumer behaviour.”
- 5.24 RadioCentre noted that “the commercial radio industry is investing heavily in digital radio content and infrastructure”, and that “as this process accelerates and audiences continue to migrate to digital platforms it is right to consider whether regulation of analogue radio should start to move closer to that which applies to digital radio”.
- 5.25 RadioCentre recognised that “for the time being any change will need to comply with the current legislative framework” but considered that “the options proposed are not likely to lead to a major relaxation of the rules or give the radio industry the freedom it needs to adapt to changing consumer tastes in a digital age.” It considered that “in the long term there may be a need to amend the legislation that governs the regulation and licensing of commercial radio as part of a broader review of the future of the sector. This would need to strike an appropriate balance between providing greater flexibility for commercial radio to compete (by removing formats and other content regulation as it currently exists) and sustaining a licensing system based on beauty parades, which we continue to support.”
- 5.26 A change to the legislation is a matter for Parliament to consider.
- 5.27 We recognise, however, that this statutory framework was established 25 years ago, when consumers had access to far less choice of music services, and that there may be a case for Government and Parliament to consider whether the current framework remains appropriate in light of changes in the market and consumer behaviour.