



Local commercial analogue radio licence durations

Statement

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Section 1

About this document

This document sets out our policy decision on the duration of local analogue commercial licences, following a consultation published on 25 March 2014.

In light of policy and market developments since 2010 when we introduced the current policy, we decided to re-evaluate whether Ofcom's policy on licence durations remains appropriate.

We have assessed the policy options in light of the analysis presented in the 2014 Consultation and the responses we received.

The statement explains that we have decided that where local commercial analogue radio licences are re-awarded, they will be granted for a period of 12 years. The existing policy of a seven-year licence duration will no longer apply.

Section 2

Executive Summary

- 2.1 Ofcom is responsible for the licensing of local commercial analogue radio stations. This includes re-advertising, re-awarding and renewing licences, if appropriate, in accordance with relevant legislation.
- 2.2 When Ofcom advertises a local commercial analogue radio licence, or re-advertises such a licence when it nears its expiry date, it can set a licence length of up to twelve years. Where a licensee also provides a service on a relevant DAB multiplex, it is eligible for an uncontested renewal of its analogue licence.
- 2.3 Our current policy, which we consulted on in 2010, is that re-advertised licences will be granted for a period of seven years. This policy was considered the best option to maintain flexibility in the event of any announcement by Government regarding the introduction of a new regulatory regime for stations remaining on analogue frequencies.
- 2.4 On 25 March 2014 Ofcom published a consultation on proposed changes to the duration for which local analogue commercial licences are granted (“the 2014 Consultation”)¹.
- 2.5 The 2014 Consultation set out policy and market developments since 2010 and the policy options for setting the duration of re-advertised licences: either continuing the current policy of seven years, or our preferred option – that local licences are re-advertised with a length of 12 years.
- 2.6 We received 12 responses to the 2014 Consultation. We have considered the arguments raised by respondents against the four criteria that we used to assess our policy options: flexibility, viability, competition and incentives.
- 2.7 The flexibility criterion aimed to ensure that Ofcom was able to maximise benefits to citizens and consumers by securing the optimal use of the spectrum and that the Government and Parliament were able to set an appropriate regulatory regime for stations remaining on analogue post switchover. In the 2014 Consultation we considered that there was less need for flexibility as the introduction of a new regime for analogue station post switchover appeared less likely in light of Government initiatives. Respondents did not generally comment on flexibility. The one response that did, supported our conclusion that we should have a reduced emphasis on this criterion.
- 2.8 On viability, we set out in the 2014 Consultation that the exact relationship between licence duration and viability was unclear but particularly short licence durations of less than 5 years might significantly diminish the commercial viability of broadcasters. We said that we would welcome views on any relevant developments which might affect this view. Respondents highlighted the benefits to licensees of longer licence durations, particularly the benefits to smaller stations in terms of recouping investments.

¹ http://stakeholders.ofcom.org.uk/binaries/consultations/local-radio-durations/summary/Local_analogue_licence_durations.pdf

- 2.9 On competition, we said in the 2014 Consultation that the effects of licence duration on competition for licences were unclear, but that we would welcome any new evidence. There was a difference of views on the effect of longer licence durations, with some suggesting that 12 years would encourage competition for licences by attracting new entrants to compete with incumbents, and others suggesting that 12 year licences might have a negative effect on competition in the market, as they would encourage the creation of national networks which have “clogged up” the market, restricting the ability of new companies to enter the market. The responses highlight the uncertain nature of the effect on competition for licences of a longer duration.
- 2.10 On incentives, we considered the extent to which particular licence durations might affect the incentives of stations to broadcast on DAB so as maintain and to broaden the number and range of DAB services available to consumers. In the light of market developments since 2010, we concluded that 12 years is unlikely to affect the number and range of services available on DAB since new commercial incentives for stations to broadcast on DAB have meant that there is less need for the incentive mechanism.
- 2.11 Responses were mixed on this point. One argued that any decision to broadcast on DAB would largely be unaffected by 12 year licence durations, and would instead be based on other factors, but another argued that the “tipping point has not yet been reached” at which commercial incentives are sufficient. We consider that the existing commercial incentives to broadcast on DAB are likely to prove sufficient and a weakening of any regulatory incentive at the point of analogue licence expiry is unlikely to have an effect on this position. We also consider that the range of services is likely to increase for other reasons (small scale services on DAB, and a second national mux), which in turn will mean that the commercial incentives are likely to increase over time. No respondent challenged this view. On this basis, the responses received do not lead us to change our position regarding incentives.
- 2.12 We have carefully considered the responses to the 2014 Consultation. In our view, the responses do not affect our assessment of the four criteria used in considering an appropriate licence duration. We have therefore decided that local commercial radio licences which are re-awarded will be granted for a period of 12 years.
- 2.13 In the 2014 Consultation we said that we were postponing all re-advertisements previously scheduled in our timetable until a new policy on licence duration was adopted. We are publishing an updated timetable with this statement.

Section 3

Background

The licensing process

- 3.1 Ofcom is responsible for the licensing of local commercial analogue radio stations. This includes re-advertising, re-awarding and renewing licences, if appropriate, in accordance with relevant legislation².
- 3.2 When Ofcom advertises a local commercial analogue radio licence, or re-advertises such a licence when it nears its expiry date, it can set the licence duration at up to 12 years.
- 3.3 From 8 April 2010, where an existing licensee also provides a service on a relevant DAB multiplex, it is eligible for an uncontested renewal of its analogue licence for a period of up to seven years³.
- 3.4 Ofcom has discretion over the duration of re-advertised local commercial analogue radio licences, subject to the 12 year statutory maximum, and has previously published its policy on the appropriate duration of such licences. Ofcom last reviewed its policy on the duration of re-advertised local commercial analogue licences in 2010 following the enactment of the Digital Economy Act 2010 (“the 2010 Act”) which introduced changes to the way commercial radio is regulated, in particular, to:
- allow the Secretary of State to nominate a date for digital switchover of certain services;
 - require Ofcom to vary the length of relevant licences once such a date is specified so that they end on that date; and
 - allow licensees who offer digital services on a relevant DAB multiplex to renew their analogue services for a further seven years.
- 3.5 Ofcom therefore set out a new policy on the duration for licences that are re-advertised and re-awarded. This followed a consultation⁴ (“the 2010 Consultation”) that set out a number of options, including five, seven and 12 years. Ofcom subsequently issued a statement (“the 2010 Statement”) that the duration should be seven years⁵.
- 3.6 In reaching this conclusion, Ofcom took account of a number of factors, in particular the need for flexibility, given the uncertainty at the time of publishing the 2010 Statement around the future direction of the sector, and digital radio switchover in particular.

² There is a summary of the statutory framework in Annex 1.

³ Licences granted before 8 April 2010 may be renewed for a period of 12 years and further renewed for up to 7 years.

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/local-licence-duration/summary/local-licence-duration.pdf>

⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/local-licence-duration/statement/LARA_Statement.pdf

- 3.7 Ofcom stated that it expected “to review this policy should the Secretary of State nominate a date for digital switchover or in the event of other significant radio policy developments (such as Government setting out proposals for any new regulatory regime)”.

Rationale for reviewing our current policy

- 3.8 On 16 December 2013, the Minister for Culture, Communications and Creative Industries outlined a package of measures that will provide more people with access to digital radio and told the Go Digital Conference that while great progress had been made in rolling-out digital radio, we needed to continue improving the service before a decision can be taken to switchover⁶.
- 3.9 Government has not indicated that it wishes to see any changes to the licensing regime for those stations which may stay on FM after any switch-over.
- 3.10 In light of the Minister’s statement and other recent developments, we decided it would be an appropriate time to review the current policy and published the 2014 Consultation on 25 March 2014.

The Consultation

- 3.11 The 2010 Consultation considered a number of options for licence duration and set out an impact assessment of each option before reaching a conclusion on the appropriate duration. In doing so, we considered a variety of factors which might be affected by particular licence durations.
- 3.12 Our approach in the 2014 Consultation was to reconsider the factors identified in the 2010 Consultation in light of developments since that time and to update the impact assessment carried out in 2010.

Criteria to consider

- 3.13 In the 2010 Statement⁷, we decided that local commercial radio licences which are re-advertised and re-awarded would be granted for a period of seven years. In reaching this conclusion, we identified a set of criteria that we used to assess the impact of the policy options on different stakeholders. These criteria were: flexibility, incentives, competition and viability (discussed in more detail in section 4).
- 3.14 Ofcom’s objectives in this area remain as outlined in the 2010 Consultation⁸. Our principal general duties – to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition – are key considerations in assessing the impacts of our proposals.
- 3.15 Having due regard to these duties and others set out in legislation⁹, our objective is to ensure that there is a range and diversity of local commercial radio services available, serving the interests of consumers and citizens. We aim to determine an

⁶ <https://www.gov.uk/government/news/more-listeners-to-get-digital-radio-choice>

⁷ http://stakeholders.ofcom.org.uk/binaries/consultations/local-licence-duration/statement/LARA_Statement.pdf

⁸ See in particular 4.4 to 4.6,

⁹ See Annex 1, Statutory Framework

appropriate approach to the duration of re-advertised licences to support this objective.

- 3.16 We also have due regard to our key statutory duty of securing the optimal use of the radio spectrum to promote the interests of citizens and consumers. It may be that at some point in the future the optimal use of the VHF Band II and medium wave spectrum is for other applications, rather than for radio broadcasting services, and our assessment below takes this into account.
- 3.17 Also, to secure the best range of local commercial radio services, it is useful to have a broad choice of proposed services from which to select a licensee (i.e. competition for licences). At the same time, in order to attract operators to apply for licences in the first place there needs to be the opportunity for them to make a commercial return on their investment. Licence duration may affect both of these factors. We also need to consider how our policy may change radio stations' incentives to offer DAB services and the consequent effect it may have on consumer choice. And we need to take into account how licence duration may constrain the Government's flexibility to make changes to the regulatory framework in the future.
- 3.18 These considerations informed our selection of the four criteria above when we previously examined this issue. In examining new policy options, we remain of the view that these are the right considerations, and thus the criteria set out above are the most relevant for the purposes of assessing the impacts of any proposals.

Developments since 2010

Policy Developments

- 3.19 There have been a number of developments since 2010 which are relevant to a consideration of the appropriate policy in this area, both at policy level and at market level.
- 3.20 The Government's Digital Radio Action Plan has resulted in work being undertaken in a number of areas with the common goal of improving coverage and take-up of DAB with a view to a potential future switchover to digital-only transmission for many existing BBC and commercial radio services.
- 3.21 In a policy report entitled *Connectivity, content and consumers: Britain's digital platform for growth*¹⁰ published in July 2013, the Government set out some further details regarding its digital radio policy, including the criteria it would seek to apply when determining which radio stations would have the option of remaining on FM after a radio switchover.
- 3.22 In December 2013, the Government said that there was still more to do before the transition to digital could be completed, and announced a package of measures¹¹ to allow more people greater access to digital radio, including investment for small scale DAB.
- 3.23 The Government also considered progress against benchmarks on listening and coverage and concluded that "now is not the time for switchover". We do not

¹⁰ <https://www.gov.uk/government/publications/connectivity-content-and-consumers-britains-digital-platform-for-growth>

¹¹ <https://www.gov.uk/government/news/more-listeners-to-get-digital-radio-choice>

therefore anticipate that a decision on a date for digital switchover for radio is likely to be forthcoming in the near future.

Market Developments

3.24 In the 2014 Consultation, we considered progress since 2010 in respect of:

- DAB coverage;
- Take-up of DAB radio sets;
- Number of services available on DAB; and
- Digital radio consumption.

3.25 Using Ofcom's annual Digital Radio Reports¹², the 2014 Consultation noted the following market developments (set out in more detail in section 3 of the 2014 Consultation¹³):

- The availability of DAB coverage has increased for all three multiplexes (BBC national DAB multiplex, Digital One and local DAB muxes);
- Take-up of radio sets capable of receiving DAB continues to grow;
- More new cars now come with DAB fitted as standard;
- Sales of DAB sets have remained stable for the past four years;
- The number of stations available on DAB increased between 2010 and 2013 from 50 to 212 respectively;
- The share of listening hours attributable to digital platforms has risen over ten percentage points since 2010; and
- DAB digital radio reach has also increased by ten percentage points from Q4 2010 to Q4 2013.

3.26 We indicated our view that, given the trends described, adoption of DAB would continue to increase. Together with the specific policy interventions recently announced by Government, which would improve the range of DAB services and their coverage, we considered that there was likely to be sustained growth and development of the DAB radio platform.

The effect of recent developments

3.27 We considered the effect of recent developments on the validity and weight to be afforded to the criteria identified in the 2010 Consultation as follows.

3.28 The Government announcement (noted in 3.22) will fund further technical investigations designed to inform spectrum re-planning work to accommodate small

¹² Most recent version is the 2013 report at: http://stakeholders.ofcom.org.uk/binaries/research/radio-research/drr-13/2013_DRR.pdf

¹³ http://stakeholders.ofcom.org.uk/binaries/consultations/local-radio-durations/summary/Local_analogue_licence_durations.pdf

scale services on DAB. It will also fund work on possible licensing regimes for small scale services in DAB. These pieces of work will then inform a future consideration by the Government of a new regulatory regime for small scale services on DAB.

- 3.29 Thus, Ofcom's understanding is that the likely policy approach will be to accommodate small services on DAB, and that any services remaining on FM post-switchover will do so under the current statutory and spectrum framework. There has been no suggestion of a new regulatory regime for services on FM being necessary post-switchover, which was anticipated in 2010. Consequently, there is less need to ensure flexibility in the ability of Government and Parliament to introduce a new licensing regime for post-switchover analogue stations. The measures taken in respect of small stations on DAB should address the concerns identified in 2010 and, consequently, we considered that we should place less weight on this criterion in assessing the appropriate options for licence duration.
- 3.30 The expansion of the DAB platform since 2010, with new services and increased listening, offers additional commercial incentives for operators to provide DAB services, and therefore reduces the need for the licensing regime to incentivise the provision of DAB services. In the 2014 Consultation, we therefore placed less weight on incentives when assessing the options.
- 3.31 We did not consider that any of the developments since 2010 had an effect on either the competition or viability criteria but invited respondents views as to whether there was any evidence that the position had changed.
- 3.32 We therefore considered that lesser weight should be placed on considerations of flexibility and incentives than was the case in 2010. Those considerations favoured a shorter period for licence durations and in a new analysis, placing less weight on them, the viability of stations became a more significant factor in assessing the appropriate outcome. Taking into account those factors, we concluded that a 12 year period would ensure the greatest benefit to stations in ensuring their viability and we had not identified any impact on listeners, Government/Parliament or other stakeholders (including other broadcasters) which might justify a shorter licence duration.

Options we consulted on

- 3.33 We consulted on two policy options:
- Option 1: Licence durations of seven years, the current policy; or
 - Option 2: Licence durations of 12 years, the maximum permitted under the legislation.
- 3.34 In the 2014 Consultation we indicated our preferred option that the duration for re-awarded or re-advertised licences should be set at 12 years on the basis of our assessment of the factors set out above.

Section 4

Consultation responses and our conclusions

4.1 In this section we present a synopsis of the analysis that we put forward in the 2014 Consultation under the four criteria of flexibility, viability, competition and incentives. We then summarise the views of respondents and set out Ofcom's consideration of these responses.

Consultation responses

4.2 We received 12 responses¹⁴ to the 2014 Consultation. We set out below the responses received and Ofcom's consideration of those responses.

4.3 Respondents commented on our consideration of the four criteria identified in the 2014 Consultation, namely flexibility, viability, competition and incentives. Respondents also indicated whether, in their view, we had reached the right conclusion in respect of the appropriate licence duration, taking into account those factors.

Flexibility

4.4 In 2010, we highlighted that we needed to take into account the possibility of changes to the regulatory framework for commercial radio in the future. We noted that certain approaches to licence duration would give us greater flexibility to maximise benefits to citizens and consumers by securing the optimal use of the spectrum, or maximising flexibility for Government and Parliament to set an appropriate regulatory regime for stations remaining on analogue bands after digital switchover.

4.5 After considering the effect of recent policy and market developments, we concluded in the 2014 Consultation that there is less need to ensure flexibility in the ability of Government and Parliament to introduce a new licencing regime for post-switchover analogue stations.

Consultation responses

4.6 One individual argued that the current 7 year licence duration is appropriate as it allows flexibility for future developments. Another respondent made a related argument, that licences should be shorter because the digital switchover should happen soon.

4.7 RadioCentre agreed with Ofcom's assertion that concerns regarding the need to ensure flexibility in 2010 are now addressed and that we should now give less weight to this criterion when assessing the options.

¹⁴ Responses can be found at <http://stakeholders.ofcom.org.uk/consultations/local-radio-durations/?showResponses=true>. One respondent requested that their submission be treated as confidential and is not published.

Consideration of responses

- 4.8 In response to the respondents who argued for 7 year licence durations to enable future radio developments and a digital switchover, we note that the flexibility criterion in our policy consideration was not considered so as to enable a digital switchover. Any possible switchover is a matter for Government and the legislative framework allows for the termination of licences in the event of a switchover. The flexibility consideration concerned the ability of the regulatory regime to allow for the establishment of a new regime for the FM band in the event that this was considered appropriate. As we set out in the 2014 Consultation, the Government had indicated its intention to support smaller stations in switching to DAB and we therefore considered it unlikely that a new regime for FM would be required.
- 4.9 We note RadioCentre's support for Ofcom's position in the 2014 Consultation with respect to flexibility.

Viability

- 4.10 In 2010, we noted that a licence has to offer applicants the opportunity to make a reasonable return on their investments to ensure that operators are prepared to apply for the licence and can maintain provision of a service. We noted that any decision on licence duration could have an effect on the financial viability of stations and therefore the variety of service available to listeners (Annex 2 includes a more detailed assessment of the impact licence duration might have on capital investment, business contracts and recouping initial start-up costs).
- 4.11 We also recognised that the exact relationship between licence duration and the viability of a station is unclear. It may be that there is a linear relationship between the two – the prospect of viability for a station becomes ever more likely as licence length increases. Alternatively, given the lifespan of certain assets which need to be replaced, it may be that there is a particular licence length at which a station becomes viable, and allowing a longer licence duration does not significantly affect this.
- 4.12 We said in the 2014 Consultation that we had not identified any new evidence on this point which might call into question our conclusions in the 2010 Statement.

Consultation responses

- 4.13 RadioCentre, Panjab Radio and Radio North Angus all highlighted the positive impact 12 year licences would have on the viability of small commercial radio stations, in terms of offering greater financial stability. RadioCentre states that small commercial radio stations operate on limited profits, and 12 year licence durations would therefore be an effective method of offering assistance to them.
- 4.14 Additionally, UKRD argue that 12 years would have a positive impact on the commercial radio sector as a whole as it would allow more appropriate investment decisions as it will focus planning and development on a longer time frame.
- 4.15 Further, UKRD contended that seven year licence durations had had a negative impact, particularly within the smaller scale commercial radio sector, by both curtailing the scale of investment in many businesses and creating more uncertainty within the sector.

Consideration of responses

- 4.16 We note the support from respondents for 12 year licences in terms of the financial viability of stations from respondents. We remain of the view set out in the 2014 Consultation that there may be benefits to longer licence durations in terms of station viability. Whilst the exact relationship between duration and viability is unclear, we note respondents' views that a 12 year duration is likely to offer benefits in terms of the viability of stations.

Competition

- 4.17 In 2010, we noted that to secure the best range of local commercial radio services, it is useful to have a broad choice of proposed services from which to select a licensee (i.e. competition for licences).
- 4.18 Our analysis in 2010 considered whether the particular options put forward might have an effect on the competitive selection process for the award of licences so as to ensure the broadest choice for listeners. We identified a trade-off between setting a licence duration long enough to encourage a number of applicants for a re-advertised licence, and one short enough to afford regular opportunities for the competitive selection process but we were not able to say with any certainty whether there would be any material difference between licence periods of seven or 12 years in this respect. Consequently, the 2010 Statement concluded that the effect on competition for licences of the various options was unclear.
- 4.19 After considering the effect of recent policy and market developments, we indicated in the 2014 Consultation that we did not consider that any of the developments since 2010 were likely to have an effect on our previous assessment of this criterion and that consequently, we remained unable to make a comparison of whether the relative impact of different licence durations would be positive or negative.

Consultation responses

- 4.20 Two individual responses said that 12 year licence durations would result in the consolidation of large and powerful national networks of stations which would have a streamlining effect in terms of output, resulting in a lack of variety and diversity of content.
- 4.21 They also suggested that 12 year licence durations would restrict the possibility for new applicants to apply for re-advertised licences. One respondent noted that incumbent operators are very rarely replaced by new entrants.
- 4.22 Arqiva argued that 12 year licences would encourage operators to compete for re-advertised licences rather than seek automatic renewal by providing a service on a DAB multiplex. RadioCentre considered that when Ofcom decided on a new licence period of seven years in 2010, our assessment of the Competition criterion was incorrect. RadioCentre state that Ofcom did not fully appreciate the possibility that longer licences may make a radio station more attractive to potential owners and therefore, encourage competition. RadioCentre also argues that there is little evidence which would suggest that the current re-advertisement process (seven year durations) has been effective in introducing additional competition in the market. RadioCentre also contended that a longer licence period (than seven years) would encourage competition as new operators would be more likely to invest in companies that have the enhanced security of longer licences.

- 4.23 In addition, RadioCentre considered that the lack of any material difference between licence periods of seven or 12 years with respect to competition for licences meant that there is no reason to offer licences for anything other than the statutory maximum of 12 years.
- 4.24 One response highlighted the automatic renewal process offered to licensees who also provide a service on a relevant DAB multiplex. They argue that this automatic renewal had made operators “lazy” and ignores the basis on which they had won their licences originally, and that it would be good for these operators to have to justify their service and compete against other operators (analogue-only services). This respondent disagreed with 12 year licence durations.

Consideration of responses

- 4.25 We do not consider that longer licence durations would necessarily result in a greater tendency towards national networks. We note the comments regarding national networks providing less variety and diversity in radio programming but have not been provided with any evidence that this is the case.
- 4.26 Respondents appear to consider that shorter licence durations would mean more opportunities for alternative providers to replace providers who have created quasi-national networks by sharing programming across several local licences. We do not consider that there would be any guarantee that a shorter licence duration (and thus more frequent opportunity to change providers) would result in either a) new licensees, or b) new licensees who do not wish to share programming between services. We further note in this respect that the majority of licences held by larger networks have been renewed in return for provision of DAB services and will therefore not be affected by the policy changes proposed in the 2014 Consultation.
- 4.27 We note the responses from Arqiva and RadioCentre arguing that longer licence periods would encourage competition. However, no new evidence has been offered on this point, and we therefore remain of the view that the overall effect of longer licences on competition is unclear. While longer durations might increase the number of competing bidders if the licences are more attractive from a commercial standpoint, on the other hand, more frequent competitions (because of shorter durations) might increase competition for licences due to the more regular nature of the bidding process. In light of the above we do not consider that this criterion is of assistance in deciding upon the appropriate licence duration.

Incentives

- 4.28 DAB digital radio is currently the only platform which offers the benefits of digital radio free-to-air, to mobile and portable receivers, and which can guarantee a range of local and UK-wide services to the vast majority of the UK. Because of these consumer benefits, we have previously stated that it is important to put in place the conditions to allow DAB digital radio to expand and thrive in the digital age¹⁵.
- 4.29 In 2010, we noted that the Digital Economy Act 2010 introduced an incentive mechanism offering a guaranteed seven year analogue licence renewal to stations which also provided a DAB service. (The DAB service provided need not be a simulcast of an FM service, although most are.) We recognised that the duration policy for re-advertised or re-awarded licences might affect those incentives if the

¹⁵ For example, see paragraph 5.76 of Radio – Preparing for the Future, Ofcom, 19 October 2005, http://stakeholders.ofcom.org.uk/binaries/consultations/radio_review2/p2.pdf

automatic renewal offered little more than stations might otherwise have obtained in any event. For instance, offering re-advertised licences for a period significantly longer than seven years might incentivise operators to opt for re-advertisement rather than a renewal. As a consequence they might withdraw their provision of DAB services.

- 4.30 Since 2010, there has been an increase in the number of DAB listeners, increased coverage, penetration of receivers and other initiatives such as in-car conversions to provide new commercial incentives to stations to broadcast on DAB and to continue to do so.
- 4.31 Moreover, the possible move of small scale services onto DAB and a new national digital radio multiplex are likely to result in a greater range of services available in the market as a whole.
- 4.32 In light of these considerations, Ofcom's policy on analogue licence durations is less likely to affect the number and range of services available on DAB since on one hand, new commercial incentives for stations to broadcast on DAB will mean less need for the incentive mechanism, if the provision of DAB services is an attractive commercial proposition of itself. At the same time the range of services available, one of the considerations behind this criterion of initiatives, is anticipated to increase for other reasons. In the 2014 Consultation, we therefore considered that it was appropriate to give this criterion less weight in assessing the options.

Consultations responses

- 4.33 One respondent argued that 12 year licences would act as a disincentive to offer a digital service, and instead, Ofcom should be shortening licences and the Government setting a switchover date.
- 4.34 Arqiva cautioned that the "*tipping point has not yet been reached*" at which commercial incentives are sufficient to get radio operators to provide DAB services and a 12 year licence option would result in operators withdrawing services from DAB platforms in the short term. Arqiva considered that, over the long term, commercial incentives will become increasingly important in influencing operators to offer a DAB service.
- 4.35 RadioCentre argued that any decision to broadcast on DAB would largely be unaffected by 12 year licence durations, and would instead "*be more likely to be based on affordability of transmission and the long-term business plan for the station*". RadioCentre considered that digital radio had become more established since 2010 and future initiatives would further assist. It therefore considered that the risk of a narrowing of the range of services was less of a concern.

Consideration of responses

- 4.36 We consider that, as we set out in the 2014 Consultation, the market trends in DAB uptake (increased listening, availability and take-up), and the recent policy initiatives intended to accelerate these trends, are likely to mean that it is an attractive commercial proposition in its own right to provide a DAB service. This is an option open to any radio operator, at any stage of their analogue licensing cycle. We do not consider that any responses have advanced evidence to counter this view.
- 4.37 We note that there was some disagreement among respondents regarding the commercial factors motivating radio operators' decision between a seven year

licence renewal and a re-advertisement of a 12 year licence where they risk losing the licence to a different operator.

- 4.38 We disagree with Arqiva's argument that a 12 year licence duration would result in operators withdrawing DAB services, because it is not possible to withdraw a DAB service, where that service has been offered in return for a seven year uncontested analogue renewal, without the operator losing that renewed analogue licence. Any impact of a 12 year analogue licence on the range of DAB services would only be realised more gradually, as licences expire and that decision point is reached by operators.
- 4.39 Even in those circumstances, the risk for an operator of losing its analogue licence through entering a competitive process is a substantial one and operators will need to balance that risk against the cost of providing DAB services. We have received no evidence which would suggest that the cost of providing DAB services would be sufficient to outweigh the risk of losing an analogue licence.
- 4.40 Overall, we remain of the view that Ofcom's policy on analogue licence durations will not have a major effect on the number and range of services available on DAB. This is because
- operators will be incentivised commercially to launch DAB services (irrespective of the relationship between these and their analogue licences);
 - at the decision point where an operator can choose between a seven year uncontested analogue renewal, in return for providing a DAB service, or applying for a analogue licence in open competition, even with a twelve year analogue licence period it remains a high risk strategy for an operator to risk losing the competition and thus their analogue licence; and
 - as we discussed in the 2014 Consultation, the range of services on DAB will increase for other reasons, namely, initiatives to bring small scale services on DAB, and new national services via a second national mux.
- 4.41 On this basis, the responses received do not lead us to change our position, that we should place less weight on the incentives criterion in considering our policy on licence durations.

Other points

- 4.42 Other points raised by respondents included the suggestion by RadioCentre that *"in the interests of fairness"*, Ofcom should offer any station that has been awarded a seven-year licence since 2010 the option of seeking re-advertisement, which (if uncontested) would add a further five years to their licence. RadioCentre believes that this approach would be *"consistent with the new policy of offering re-advertised licences that are a total of 12 years in duration"* and would *"mitigate against the negative impact for those stations that have been awarded significantly shorter licences since 2010"*.
- 4.43 We do not consider it appropriate to seek to extend the duration of licences awarded prior to this statement. Where licences are awarded or readvertised, potential applicants are aware of the duration for which any licence is proposed to be offered. If we were to seek to extend the duration of existing licences, this would alter the basis of the grant of the licence. We do not see any reason why this would be appropriate at this time.

- 4.44 In addition, Arqiva proposed that the increase in licence duration to 12 years would only be appropriate if it were to be accompanied by a similar increase to the uncontested renewal period offered for those stations that provide a service on DAB, in order to prevent any negative impact on DAB offerings.
- 4.45 As Arqiva notes, such a change would require amendment to the primary legislation governing the award of DAB licences. Any change to primary legislation is a matter for Parliament and Ofcom has not further considered Arqiva's proposal.

Conclusions

- 4.46 We remain of the view that there is less need to ensure flexibility in the ability of Government and Parliament to introduce a new licencing regime for post-switchover analogue stations, and accordingly that less weight should be placed on this criterion.
- 4.47 We think that the existing commercial incentives to offer a DAB service are likely to outweigh any negative impact that our policy might have and that respondents have not put forward any evidence to suggest otherwise. We also emphasise the related point that we made in the 2014 Consultation that the range of services will increase for other reasons (small scale services on DAB, and a second national multiplex being advertised). For this reason we are placing less weight on the incentives criterion.
- 4.48 We remain of the view that the effects of longer licences on competition for licences are unclear and we have not been presented with any new evidence on this point.
- 4.49 In the 2014 Consultation, we concluded that, placing less weight on the flexibility and incentives criteria, there is little justification for not granting re-awarded licences for a period of 12 years. A 12 year period would ensure the greatest benefit to the stations themselves in ensuring their viability and we have not identified any other reasons which might justify a shorter licence duration.
- 4.50 Local commercial radio licences which are re-awarded will be granted for a period of 12 years.
- 4.51 A number of re-advertisements have been postponed due to our consultation. We are publishing an updated re-advertisement timetable with this statement which takes account of our new policy.

Annex 1

Statutory framework

Ofcom's general duties

- A1.1 Any decision about the policy which Ofcom should adopt on the re-advertisement of local analogue commercial radio licences needs to be based on consideration of Ofcom's statutory duties and responsibilities.
- A1.2 Ofcom has general duties set out in the 2003 Act.
- A1.3 Our principal general duty is set out in section 3 of the 2003 Act. It is to further the interests of citizens in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- A1.4 To meet this duty Ofcom is required to secure, among other things:
- the optimal use for wireless telegraphy of the electro-magnetic spectrum;
 - the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and
 - the maintenance of a sufficient plurality of providers of different television and radio services.
- A1.5 In performing the duty Ofcom must have regard to:
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - any other principles appearing to Ofcom to represent the best regulatory practice.

Ofcom's specific duties and functions: local analogue radio

- A1.6 Under section 85 of the 1990 Act, one of Ofcom's functions is the licensing of national, local and community analogue radio stations.
- A1.7 Section 85 requires Ofcom, in performing those functions, to secure the provision of a range and diversity of local analogue services.

Advertisement and renewal of local analogue radio licences

- A1.8 The statutory framework for the advertisement and renewal of local analogue commercial radio licences is set out in Part III of the 1990 Act, which has been modified by the 2010 Act.

Advertisement

- A1.9 Where Ofcom proposes to grant a local analogue licence it must publish a notice inviting applications as set out in section 104 of the 1990 Act.
- A1.10 Where a local analogue licence is due to expire we may instead publish a notice under section 104B of the 1990 Act stating that we propose to grant a further licence and inviting declarations of intent to apply. If we receive a declaration of intent from a person other than the licence holder we must publish a notice inviting applications under section 104. If we receive a declaration of intent from the licence holder and no other person we must invite the licence holder to apply for the licence.
- A1.11 A licence to provide a local analogue service must be for a period of no more than 12 years (section 86 of the 1990 Act).

Renewals

12 year renewal

- A1.12 Before 8 April 2010, a local analogue licence¹⁶ could be renewed on one occasion for a period of 12 years if the applicant nominated a local digital sound programme service provided or to be provided by him and a relevant local radio multiplex service.
- A1.13 After the coming into force of section 32 of the 2010 Act on 8 April 2010, a local analogue licence which was granted before 8 April 2010 may be renewed under section 104A of the 1990 Act on one occasion for a period of 12 years if the applicant nominates a local digital sound programme service provided or to be provided by him and a relevant local multiplex service. A local analogue licence granted on or after 8 April 2010 may not be renewed under section 104A.
- A1.14 An application for renewal under section 104A may not be made before Ofcom publish a notice inviting applications for a licence to provide a relevant local radio multiplex service or more than 3 years before the licence would otherwise expire, and may not be made less than 3 months before the date Ofcom would need to publish a notice if we were to grant a fresh licence to provide the service.

Renewal of up to seven years

- A1.15 Following the coming into force of section 32 of the 2010 Act, a local analogue licence¹⁷ which has been renewed for 12 years under section 104A or which is granted on or after 8 April 2010 may be renewed under section 104AA of the 1990 Act on one occasion for a period of not more than seven years.
- A1.16 The applicant must nominate a local digital sound programme service provided or to be provided by him and a relevant local multiplex service. Alternatively, under new section 104AB of the 1990 Act, in the case of a licence approved by Ofcom (an 'approved licence')¹⁸, an applicant may make a 'national nomination', i.e. he may

¹⁶ Renewals are also available for national licences but are not discussed in this document.

¹⁷ Renewals are also available for national licences but are not discussed in this document.

¹⁸ The current list of approved licences is set out in

<http://www.ofcom.org.uk/consult/condocs/radio/statement/Addendum.pdf>

nominate a national digital sound programme service provided or to be provided by him and a national radio multiplex service.

- A1.17 An application for renewal may not be made more than 3 years before the licence would otherwise expire, and may not be made less than 3 months before the date Ofcom would need to publish a notice if we were to grant a fresh licence to provide the service.

Extension and renewal of pre-transfer local analogue licences

- A1.18 Under section 253 of the 2003 Act, a person who holds a pre-transfer local licence (i.e. one which was granted before the radio transfer date¹⁹ and which has not been modified under section 253 or renewed at any time on or after that date) is entitled to apply to Ofcom for a 4 year extension of the licence.
- A1.19 An application may not be made more than 3 years before the licence would otherwise expire, or less than 3 months before the date we would need to publish a notice if we were to grant a fresh licence to provide the service.
- A1.20 A pre-transfer local licence (including one for a period extended under section 253 of the 2003 Act) may not be renewed under section 104A of the 1990 Act if it has already been renewed under this section before the radio transfer date. Otherwise the renewal provisions described above apply.

Termination of local analogue licences

- A1.21 Section 86 of the 1990 Act provides that Ofcom may vary the period for which a licence is to continue in force only if the licence holder consents. However this does not affect the operation of the following provisions which have been inserted into the 1990 Act by the 2010 Act.

Digital switchover

- A1.22 The Secretary of State may give notice to Ofcom under new section 97A of the 1990 Act, nominating the date for digital switchover for the post-commencement services specified in the notice. A 'post-commencement service' is a local, national or additional service that is provided under a licence that was granted on or after 8 April 2010 or which has been renewed under section 103B (national licences) or section 104AA (renewal of local licences for up to seven years). The Secretary of State may nominate different dates for different services and may withdraw a nomination.
- A1.23 After a date for digital switchover has been nominated, section 97B provides that if the licence to provide the post-commencement service expires after the date for digital switchover, Ofcom must vary the licence so that it expires on or before that date. However Ofcom may not shorten the licence period so that it ends less than 2 years after the date on which it gives notice of the variation unless the licence holder consents. If the licence expires on or before the date for digital switchover, Ofcom may not vary it so that it expires after that date.

¹⁹The date on which the Radio Authority's functions under Part III of the 1990 Act were transferred under the 2003 Act to Ofcom, i.e. 29 December 2003

Variation of licence period following renewal

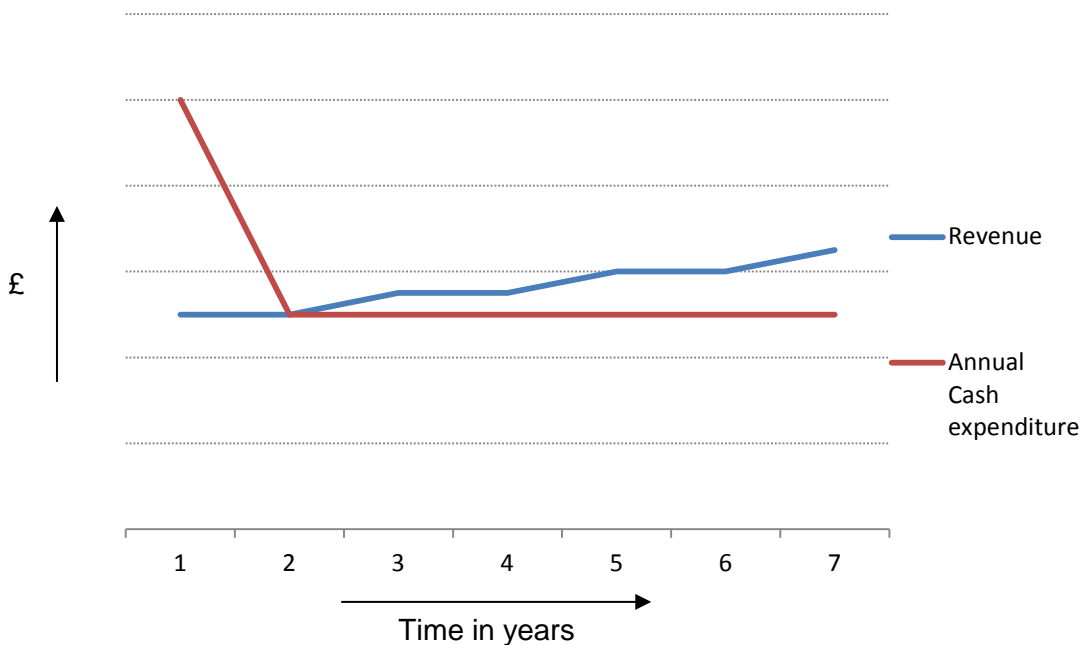
- A1.24 If the Secretary of State has not nominated a date for digital switchover of a relevant renewed service or has withdrawn the nomination, he may give notice to Ofcom under new section 105A of the 1990 Act fixing a termination date in relation to that service. A 'relevant renewed service' is a national service provided under a licence which has been renewed under section 103B or a local service provided under a licence that has been renewed under section 104AA (renewal of local licences for up to seven years). Different dates may be fixed for different services but the termination date may not be before 31 December 2015.
- A1.25 If the licence to provide a relevant renewed service expires after the termination date fixed for the service, Ofcom must vary the licence so that it ends on or before that date. However Ofcom may not shorten the licence period so that it ends less than 2 years after the date on which they give notice of the variation unless the licence holder consents. If the licence expires on or before the termination date, Ofcom may not vary it so that it expires after that date.
- A1.26 The Secretary of State must consider, before 31 December 2013, whether to exercise the powers in section 105A.

Annex 2

Commercial issues

This annex is reproduced from the 2010 Consultation for ease of reference

- A2.1 The length of time for which a local analogue licence is granted has implications for the commercial viability of the broadcasting radio station.
- A2.2 A radio station is said to be economically viable if the revenues received over the licence period are more than the costs incurred over that period.
- A2.3 If the radio broadcaster is a new entrant, the revenues may increase over time as the station establishes a listener base and reputation.
- A2.4 Conversely the costs a radio station incurs may be higher in the early years as one-off capital purchases are required and initial start-up activities need to be carried out.
- A2.5 Below is an illustrative graph of a typical local analogue radio station which shows the annual cash expenditure and revenues of a radio station against the number of years it has been broadcasting.



- A2.6 This annex will focus on the following three points
 - Capital investment: some of the initial capital equipment a radio station requires will last for several years. Normally the costs of this equipment should be

recovered over the equipment's useful life. However if the licence period is shorter than the useful life then the costs of the assets will need to be recovered over the shorter period of the licence thus requiring higher revenues to break even in this period.

- **Business contracts:** in order to broadcast, a radio station will need premises, a transmission system, and various other activities carried out. The radio broadcaster may choose to contract with third parties to provide these services. The third party suppliers may offer lower annual fees in exchange for commitments to longer contract periods. However the contracts a radio station signs cannot exceed the licence period.
- **Initial start-up activities:** a radio station commencing operations will perform a number of activities in the first years that once established it will not have to repeat. For example it will incur marketing costs establishing the brand and listener base. A longer licence period will allow these initial costs to be recovered over a longer period during which more revenue may be generated. This could reduce the risk of the venture because it will enable radio stations to have a longer period over which they can recover these initial costs.

Typical local analogue commercial station

A2.7 There is a wide range of local analogue commercial radio stations. The financial return these stations typically receive varies considerably. Some return sustained financial profit, whilst some continue broadcasting despite incurring financial losses.

A2.8 The broad range of these stations can be seen in the measures shown below:

Measure	Local analogue station (no DAB coverage)
Measured coverage area (MCA)	Up to 350,000 people
Annual revenues	Up to £2 million
Annual profits/losses	ranging from +£350,000 profit to - £200,000 loss
Number of Staff	ranging from 7 to 20 direct staff
Business planning cycle	5 years (taken from licence applications)

Costs spread over time and business contracts

A2.9 Broadcasting activities: Ofcom commissioned a UK radio 'flow of funds' report in May 2009.²⁰ Within this report the costs a 'typical' local radio station would incur was discussed. The table below is a summary table from this report.

²⁰ UK Radio Impact of regulatory relaxations, Ofcom, 5 May 2009, <http://stakeholders.ofcom.org.uk/binaries/consultations/radio/annexes/annex8.pdf>

Cost Category	Constituent cost	% of Annual accounting costs
Sales and marketing	External commission	1%
	In-house sales costs	15%
	Station marketing costs	6%
Transmission	Transmission	12%
Production	Programming	15%
	Commercial production	4%
Rights	Rights	9%
General & Admin	General & Admin costs	37%

- A2.10 The business planning timeframe: The costs a radio station incurs over time should be planned in advance to ensure optimum business efficiency and management. Due to the way costs may be incurred it may be preferable for a radio station to plan certain costs over certain timeframes to ensure the most efficient outcome.

The table below suggests possible planning period for activities a radio station performs

Cost Category	Actual Cost	Planning period	Description
Sales and Marketing	Staff	1-3 years	Staff costs are generally planned annually however being able to offer staff greater job security may attract better talent
	Advertising Equipment	1-3 years	Advertising equipment, for example stands may be purchased that could last over a number of years
Transmission	Annual charge	1 year	Annual transmission fees paid to a transmission provider
	Fixed term contract	>5 years	Annual transmission fees paid to a transmission provider under a long fixed term contract
	Fixed capital cost	>5 years	Transmission equipment such as radio antennas purchased and depreciated over a number of years
Production	Staff	1-3 years	Staff costs are generally planned annually however being able to offer staff greater job security may attract better talent

Cost Category	Actual Cost	Planning period	Description
Rights General & Administration costs	Production equipment	1-5 years	Production equipment is generally depreciated over 5 years, however this may last several years longer.
	Rights	1 year	Rights are paid annually with a fixed and variable element
	Staff	1-3 years	Staff costs are generally planned annually however being able to offer staff greater job security may attract better talent
	Property costs	>5 years	Offices and premises could be leased over long periods of time to seek reduced annual charges
	Office equipment	1-5 years	Office equipment is generally depreciated over 5 years

Initial start-up activities

A2.11 A radio station must carry out a number of activities before it can go on-air.

A2.12 Below is an example of some of the one-off activities a radio station needs to complete before it can broadcast

- Purchase radio broadcasting equipment
- Find suitable premises
- Employ broadcasting and office staff
- Purchase transmission equipment or seek a third party to provide this service

A2.13 These activities do not need to be repeated once the radio station is broadcasting (although new equipment etc may be required).

A2.14 Local radio stations obtain revenue from three main sources

- National air time advertising. Local radio stations can carry national advertising. The size of this revenue is related to the reach and listener base of the radio station.
- Local business advertising. Local radio stations can obtain advertising revenue from local businesses. The size of the revenue generated is negotiated by the sales staff, however the bigger the audience and the more established the brand the easier it will be for sales staff to negotiate attractive sales deals.
- Sponsorship. Local businesses could sponsor programmes and radio events in return for specific advertising. Again more established radio stations may find it easier to win these types of deals.

A2.15 As shown above radio stations will have to engage in activities in the early years to ensure they can broadcast. These activities will incur significant costs which will then have to be recovered over the broadcasting period. Additionally radio stations will find it more difficult to attract advertising (the main source of revenue) in the early years of broadcasting when the station does not have an established listener base and client list.

Conclusions

- A2.16 The costs a radio station incurs in the early years of broadcasting will be greater than in later years due to the up-front capital investment and set-up activities the radio station needs to carry out.
- A2.17 The revenue a radio station attracts in the early years of broadcasting may be less than in the later years. This is because revenue is linked to the size of the listener base (which could grow over time) and the local business relationships the radio station establishes (which again could grow over time).
- A2.18 Therefore longer licence periods may increase the economic viability of a radio station as it will have more years of potentially increasing annual revenues to recover the initial up-front costs. This assumes the annual revenues in later years are larger than the annual costs, producing a positive contribution to offset the initial up-front expenditure.
- A2.19 The rate at which the revenue a local radio station generates increases over time (if at all) is very uncertain.
- A2.20 The business plans radio applicants have submitted for past analogue licences suggest initial up-front capital costs and activities required to broadcast are usually depreciated over 5 years, although in some cases this may be slightly longer. This may indicate that the initial costs of these assets are expected to be recovered by the revenue generated over a 5 year period.
- A2.21 The business plans radio applicants submitted for past analogue licences suggest radio stations generally seem to plan their business operations over 5 years. This may be due to the following factors –
- Broadcasting revenues are very uncertain over periods greater than five years
 - Radio stations generally forecast to break even over a five year period
 - Potential investors generally require a return on their investment within 5 years.
- A2.22 Radio stations may engage in contracts with third party suppliers to carry out activities on their behalf. Signing longer contracts with these suppliers may reduce the annual cost of the contracts.
- A2.23 Licence periods of less than five years may significantly influence the commercial viability of radio broadcasters.
- A2.24 Licence periods greater than five years may give commercial radio stations a better chance of recovering their total expenditure during the licence period depending on the way their business is structured and planned.