

Analogue Commercial Radio Licence: Format Change Request Form

Date of request:	10.2.23
Station Name:	Clyde 2
Licensed area and licence number:	Glasgow AL074
Licensee:	Bauer Radio Ltd
Contact name:	Peter Davies

Details of requested change(s) to Format

Character of Service <i>Complete this section if you are requesting a change to this part of your Format</i>	Existing Character of Service:
	Proposed new Character of Service:
Programme sharing and/or co-location arrangements <i>Complete this section if you are requesting a change to this part of your Format</i>	Current arrangements:
	Proposed new arrangements:
Locally-made hours and/or local news bulletins <i>Complete this section if you are requesting a change to this part of your Format</i>	Current obligations: 10 hours a day on weekday daytimes made in Scotland
	Proposed new obligations: 7 hours a day on weekday daytimes made in Scotland with local news throughout weekday daytimes

The holder of an analogue local commercial radio licence may apply to Ofcom to have the station's Format amended. Any application should be made using the layout shown on this form, and should be in accordance with Ofcom's published procedures for Format changes.

Under section 106(1A) of the Broadcasting Act 1990 (as amended), Ofcom may consent to a change of a Format only if it is satisfied that *at least* one of the following five statutory criteria is satisfied:

- a) *that the departure would not substantially alter the character of the service;*
- b) *that the departure would not narrow the range of programmes available by way of relevant independent radio services to persons living in the area or locality for which the service is licensed to be provided;*
- c) *that the departure would be conducive to the maintenance or promotion of fair and effective competition*
- d) *that there is evidence that, amongst persons living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or*
- e) *that (i) the departure would result from programmes included in the licensed service ceasing to be made at premises in the area or locality for which the service is provided, but (ii) those programmes would continue to be made wholly or partly at premises within the approved area (as defined in section 314 of the Communications Act 2003 (local content and character of services)).*

Only one of these five criteria need be satisfied in order for Ofcom to consent to the proposed change. However, even if Ofcom is of the opinion that the proposed change satisfies one or more of the statutory criteria, there may be reasons (depending on the particular circumstances of the case) why Ofcom may not consent to the proposed change. The additional criteria to which Ofcom will have regard when exercising this discretion can be found on our website.

Applicants should note that, under section 106ZA of the same Act (as amended), a proposed change that *does not* satisfy the first or last of these criteria (i.e. a change that Ofcom considers *would* or *could* substantially alter the character of the service, or does not relate to the origin of locally-made programmes) must, if it is to be considered further under any of the other three criteria, be consulted upon.

In the event that Ofcom receives a request for Format change and considers that criterion (a) or (e) is *not* satisfied, it will seek confirmation from the applicant as to whether it wishes to proceed with the request (and, if so, whether it wishes to amend or replace its submission in light of the necessity to make it public).[#]

Please set out the statutory criterion, or criteria, set out in section 106(1A) of the Broadcasting Act 1990 that you believe is/are satisfied in relation to this Format change request, and the reasons for this.

- The proposed change would not substantially alter the character of service. The change to simplify the format is in line with Ofcom's format and localness guidelines.

Under Ofcom's Localness Guidelines the station is currently required to broadcast programmes made in Scotland for a minimum of 10 hours a day during weekday daytimes. It is not required to broadcast any local programmes or local news. In fact, it broadcasts 13 hours a day on weekdays of programmes made in Scotland (shared across the Scottish AM stations) and currently broadcasts local news, travel and weather throughout daytime.

Ofcom's current policy dates from 2010. While the FM localness guidelines were relaxed significantly in 2018, the AM guidelines remained unchanged. In recent years AM listening has declined significantly and we believe the level of regulation on AM stations is now disproportionate.

Bauer has announced it plans for significant further investment in Greatest Hits Radio, including bringing the Scottish stations listed above into the Greatest Hits Radio network, as we believe this will bring significant benefits to listeners. These plans involve networking more content across the Scottish stations, while continuing to broadcast 7 hours a day on weekday daytimes produced in Scotland (a Scottish breakfast show and early afternoon show). As in England and Wales, the provision of local news and information will be an important part of the Greatest Hits Radio proposition in Scotland.

Bauer has also recently announced its intention to relinquish its national AM licence for Absolute Radio as listening levels have now fallen so low as to make the station unviable. While AM listening to these Scottish stations is higher than AM listening to Absolute Radio, they are nevertheless close to the point where it is no longer viable to broadcast on AM if they are required to comply with the existing Localness Guidelines.

We note that back in 2017 DCMS published the Government's conclusions of its consultation on radio regulation which stated "We believe that the current localness requirements set out under s.314 of the Communications Act 2003 are now too onerous and are acting to constrain the commercial radio industry from being able to rationalise their production base, making it harder to compete effectively against new online services. With pressures likely to grow on commercial radio in the next 10 years, and with no localness requirements on DABonly commercial services, we believe the benefits of relaxing the local production requirements outweigh the disadvantages. Whilst we very much value commercial stations that want to continue broadcasting locally we don't think that the current regulatory requirements which are prescriptive on commercial radio need to be as restrictive as they are at present."

The statement went on to note the continued importance of local news and information. Bauer concurs with this view.

Bauer is therefore requesting to change the format to reduce the requirement for 10 hours of programmes during weekday daytimes to be made within the nation where the station is based to reduce it to 7 hours to be made within the nation, but to include a requirement for local news to be broadcast throughout weekday daytimes.

We note this is a significantly higher requirement than the current Ofcom FM guidelines, even though AM listening is only a fraction of FM listening.

Please provide any additional information and/or evidence in support of the proposed change(s) below. In particular, the applicant may wish to outline how they see that the proposed change fits within Ofcom’s published Format change request policy and also Ofcom’s Localness guidance, which includes our co-location and programme sharing policy.

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Analogue Commercial Radio Licence: Format Change Request Form

Date of request:	10.2.23
Station Name:	Forth 2
Licensed area and licence number:	Edinburgh AL098
Licensee:	Bauer Radio Ltd
Contact name:	Peter Davies

Details of requested change(s) to Format

Character of Service <i>Complete this section if you are requesting a change to this part of your Format</i>	Existing Character of Service:
	Proposed new Character of Service:
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Analogue Commercial Radio Licence: Format Change Request Form

Date of request:	10.2.23
Station Name:	MFR 2
Licensed area and licence number:	Inverness AL056
Licensee:	Bauer Radio Ltd
Contact name:	Peter Davies

Details of requested change(s) to Format

Character of Service <i>Complete this section if you are requesting a change to this part of your Format</i>	Existing Character of Service:
	Proposed new Character of Service:
Programme sharing and/or co-location arrangements <i>Complete this section if you are requesting a change to this part of your Format</i>	Current arrangements:
	Proposed new arrangements:
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Analogue Commercial Radio Licence: Format Change Request Form

Date of request:	10.2.23
Station Name:	Tay 2
Licensed area and licence number:	Dundee & Perth AL027
Licensee:	Bauer Radio Ltd
Contact name:	Peter Davies

Details of requested change(s) to Format

Character of Service <i>Complete this section if you are requesting a change to this part of your Format</i>	Existing Character of Service:
	Proposed new Character of Service:
Programme sharing and/or co-location arrangements <i>Complete this section if you are requesting a change to this part of your Format</i>	Current arrangements:
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Station Name:	West Sound
Licensed area and licence number:	Ayr AL013
Licensee:	Bauer Radio Ltd
Contact name:	Peter Davies

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Ofcom's current policy dates from 2010. While the FM localness guidelines were relaxed significantly in 2018, the AM guidelines remained unchanged. In recent years AM listening has declined significantly and we believe the level of regulation on AM stations is now disproportionate.

Bauer has announced it plans for significant further investment in Greatest Hits Radio, including bringing the Scottish stations listed above into the Greatest Hits Radio network, as we believe this will bring significant benefits to listeners. These plans involve networking more content across the Scottish stations, while continuing to broadcast 7 hours a day on weekday daytimes produced in Scotland (a Scottish breakfast show and early afternoon show). As in England and Wales, the provision of local news and information will be an important part of the Greatest Hits Radio proposition in Scotland.

Bauer has also recently announced its intention to relinquish its national AM licence for Absolute Radio as listening levels have now fallen so low as to make the station unviable. While AM listening to these Scottish stations is higher than AM listening to Absolute Radio, they are nevertheless close to the point where it is no longer viable to broadcast on AM if they are required to comply with the existing Localness Guidelines.

We note that back in 2017 DCMS published the Government's conclusions of its consultation on radio regulation which stated "We believe that the current localness requirements set out under s.314 of the Communications Act 2003 are now too onerous and are acting to constrain the commercial radio industry from being able to rationalise their production base, making it harder to compete effectively against new online services. With pressures likely to grow on commercial radio in the next 10 years, and with no localness requirements on DAB-only commercial services, we believe the benefits of relaxing the local production requirements outweigh the disadvantages. Whilst we very much value commercial stations that want to continue broadcasting locally we don't think that the current regulatory requirements which are prescriptive on commercial radio need to be as restrictive as they are at present."

The statement went on to note the continued importance of local news and information. Bauer concurs with this view.

Bauer is therefore requesting to change the format to reduce the requirement for 10 hours of programmes during weekday daytimes to be made within the nation where the station is based to reduce it to 7 hours to be made within the nation, but to include a requirement for local news to be broadcast throughout weekday daytimes.

We note this is a significantly higher requirement than the current Ofcom FM guidelines, even though AM listening is only a fraction of FM listening.

Please provide any additional information and/or evidence in support of the proposed change(s) below. In particular, the applicant may wish to outline how they see that the proposed change fits within Ofcom’s published Format change request policy and also Ofcom’s Localness guidance, which includes our co-location and programme sharing policy.

Notes

Ofcom may approve a change under any of criteria (b) to (d) without consultation, or after a consultation of less than 28 days, if Ofcom considers that to hold a consultation at all, or for 28 days or more, would result in a delay that would be likely to prejudice the interests of the licensee. Ofcom may also remove for the purposes of consultation any confidential information submitted by the licensee.

Data Protection

We require the information requested in this form in order to carry out our licensing duties under the Broadcasting Act 1990, Broadcasting Act 1996 and Communications Act 2003. Please see Ofcom’s General Privacy Statement www.ofcom.org.uk/aboutofcom/foi-dp/general-privacy-statement for further information about how Ofcom handles your personal information and your corresponding rights

Ofcom notes on the requests

Statutory requirements

These requests relate to five AM licences in Scotland held by Bauer Radio Limited ('Bauer'). These are Glasgow (Clyde 2), Edinburgh (Forth 2), Inverness (MFR 2), Dundee & Perth (Tay 2) and Ayr (West Sound).

In each case these proposed changes would change the requirements in the Format in relation to locally-made hours and/or local news bulletins¹. This would constitute a departure from the character of the service as set out in the stations' Formats, and accordingly can only be agreed if Ofcom is satisfied in regard to one of the statutory criteria set out in section 106 (1A) of the Broadcasting Act 1990 ("the 1990 Act", as set out in the request, above).

If we are satisfied in relation to one of the statutory criteria, we are then able to decide whether or not to approve the request, taking account of our general duties under section 3 of the Communications Act 2003 ("the 2003 Act") and our published policy criteria.

In relation to local services, Ofcom has a duty under s.314(1) of the 2003 Act to carry out our functions in relation to local services in order to best secure:

- programmes consisting of, or including, local material are included in such services; and
- a suitable proportion of those programmes consist of locally made programmes.

Ofcom also has a duty² to draw up guidance as to how these requirements should be satisfied, which we have regard to when carrying out our functions in this area. The localness guidelines are issued under this duty.

Ofcom's principal duty³ in carrying out our functions 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. By virtue of this, Ofcom is required to secure (amongst other things) the availability throughout the United Kingdom of a wide range of 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. Ofcom must also have regard to the opinions of consumers in relevant markets and of members of the public generally and the different interests of persons in the different parts of the United Kingdom.

Although we generally consider Format change requests on a licence-by-licence basis, these five requests are identical and inter-related. We have therefore considered them together, and this statement represents our decisions in relation to each of the five licences.

All five services are currently required to broadcast at least 10 hours of programming during weekday daytimes from Scotland. This is consistent with Ofcom's [localness guidelines](#), in

¹ Locally-made hours in this case refers to the amount of programming broadcast from Scotland, rather than the specific local area which each service is licensed to serve.

² Section 314(2) of the 2003 Act.

³ Section 3 of the 2003 Act.

which we say each AM station should produce a minimum of 10 hours of programmes during weekday daytimes from within the nation where the station is based.

Bauer has requested, for each licence, to reduce this requirement to 7 hours per day, with the addition of local news bulletins throughout weekday daytimes on each service (which is not currently a requirement in any of these Formats).

Assessment

Statutory criteria

As mentioned above, in each case these proposed changes would change the requirements in the Format in relation to locally-made hours and/or local news bulletins. This would constitute a departure from the character of the service as set out in the stations' Formats, and accordingly Ofcom can consent only if satisfied that one of the following statutory criteria set out in section 106 (1A) of the 1990 Act is met:

- a) that the departure would not substantially alter the character of service;
- b) that the departure would not narrow the range of programmes available by way of relevant independent radio services to people living in the area or locality for which the licence service is to be provided;
- c) that, in the case of a local licence, the departure would be conducive to the maintenance and promotion of fair and effective competition in that area or locality;
- d) that, in the case of a local licence, there is evidence that, amongst people living in that area or locality, there is a significant demand for, or significant support for, the change that would result from the departure; or
- e) that, in the case of a local licence-
 - i. the departure would result from programmes included in the licence service ceasing to be made at the premises in the area or locality for which the service is provided, but
 - ii. those programmes would continue to be made wholly or partly at premises within the approved area⁴.

For each of the five licences, we consider that whilst the changes proposed by Bauer would be a departure from the character of the service as set out in the Formats, we do not believe that they would substantially alter the overall character of the service (i.e. "a full service, broad music and information station aimed primarily at over 35s" in its local area). This is because they do not impact on the type of programming that is broadcast. Rather, the changes would constitute a relatively small reduction in the amount of programming produced in, and broadcast from, Scotland in weekday daytimes.

We also note that listener research over recent years has consistently found that locally-based presenters are seen by listeners as less important than relevant and accurate local news and information updates⁵, and having presenters who talk about local places and

⁴ This is defined in s.314 of the 2003 Act.

⁵ See:

events is much less of a reason for listening to local commercial radio stations than the music they play and the local news and information they provide⁶. This suggests that a relatively small reduction in locally-made programming is less likely to interfere with audience enjoyment of these stations than, for example, a change in music policy or a more substantial change to the overall character of the service.

We also do not consider the proposed addition of a requirement to provide local news throughout weekday daytimes would substantially alter the character of the service. This is because local news is already being provided on these five services, despite it not being a Format requirement, or an expectation on AM stations in the localness guidelines⁷. However, we recognise that such output is likely to enhance the station's ability to deliver on the 'information' aspect of its character of service, and note from our listener research that such material is likely to be particularly important to audiences in choosing to listen to a local commercial radio station.

Therefore, in respect of each of the five requests, we are satisfied in relation to criterion (a) in Section 106 (1A) of the 1990 Act that the departure from the character of the licensed service would not substantially alter the character of the service.

Published policy

Even where Ofcom is satisfied that one of the statutory criteria are satisfied, the legislative framework leaves to Ofcom's judgment the decision as to whether to proceed with permitting the proposed change(s).

Accordingly, we have also had regard to our [published policy on Format change requests](#). In particular, we have had regard to the following points:

- If a relevant statutory criterion is met, Ofcom applies the following criteria against which to judge whether a request of this kind should be approved or not:
 - the extent of the impact of the change on the character of the service;
 - the time elapsed since the licence was awarded;
 - the considerations taken into account in making the original award;
 - the views of listeners and stakeholders;
 - the avoidance of 'Format creep';
 - whether the station broadcasts on AM or FM - changes, including substantial changes, to AM station Formats, will therefore be more willingly agreed than would be the case for FM stations; and
 - other statutory obligations in relation to a particular decision (e.g., a proposed change to the summary 'Character of Service' that also affects the amount of local material or locally-made programmes would have also to be

• https://www.ofcom.org.uk/__data/assets/pdf_file/0026/81467/local_commercial_radio_content_research.pdf

• https://www.ofcom.org.uk/__data/assets/pdf_file/0022/115168/local-radio-data.pdf

⁶ https://www.ofcom.org.uk/__data/assets/pdf_file/0012/115113/consultation-localness-radio.pdf (see pages 10-12)

⁷ The localness guidelines state that all stations required to broadcast local material should broadcast local news at least hourly throughout peak-time on weekdays and weekends. As AM services are not expected to broadcast local material under the localness guidelines, they have no requirement in their Formats to broadcast local news.

considered in light of Ofcom's localness obligations under s.314 of the 2003 Act and our published localness guidance.

Having had regard to Ofcom's policy on Format change requests, we are of the view that the Format change requests should be approved:

- For the reasons given above in relation to the statutory criteria, we are satisfied that the extent of the impact of the change on the character of service will be low;
- each of these licences has been in issue for decades, and therefore these are not cases of changes being requested soon after licence award, where we have said we expect stronger cases for changes requested within two years of launch;
- we also do not consider there to be any relevant considerations which would have been taken into account when any of these licences were originally awarded which might impact on our decisions now.
- additionally, this is not a case of 'Format creep' – there have not been a series of small changes made to these five Formats previously, which we would consider to amount, in aggregate, to a substantial alteration to the character of the service. The character of service included within these five Formats has remained broadly the same for many years.

We also say in our Format change guidance that Ofcom has long recognised that AM stations are at a disadvantage in retaining listeners because of the relatively poor technical quality of the medium and therefore changes, including substantial changes, to AM station Formats, will be more willingly agreed than would be the case for FM stations.

In the requests, Bauer has highlighted the challenges associated with broadcasting on AM, saying "While AM listening to these Scottish stations is higher than AM listening to Absolute Radio, they are nevertheless close to the point where it is no longer viable to broadcast on AM if they are required to comply with the existing Localness Guidelines."

We are also cognisant of the findings of the recent Digital Radio and Audio Review⁸ in relation to AM broadcasting. This report demonstrated the consistent decline in AM listening figures, with listening hours falling from roughly 60m hours in 2011 to about 20m hours in 2020. The review concluded that AM broadcasting was likely to become commercially unsustainable by 2025.

Taking into account our general duties under section 3 of the 2003 Act, we consider that, balanced against our other duties and interests, it is appropriate for us to be flexible in our approach, in order to allow these services to continue broadcasting on AM. In this case, a relatively modest reduction in the locally-made programming for these stations is preferable to these stations no longer broadcasting on AM at all. We therefore consider that approving these requests is consistent with our general duty under section 3 of the 2003 Act, to ensure that a wide range of high-quality services is available to consumers on the AM platform.

Localness guidelines

The published policy on Format change requests also flags that Ofcom may need to consider other statutory obligations in relation to a particular decision to approve a Format change.

⁸ <https://www.gov.uk/government/publications/digital-radio-and-audio-review>

Given these Format change requests concern the localness aspects of these five services, we have considered the requests in light of Ofcom's localness obligations under s.314 of the 2003 Act, and in light of the localness guidelines.

We recognise these requests would be a departure from our localness guidelines for analogue commercial radio stations, which say each AM station should produce a minimum of 10 hours of programmes during weekday daytimes from within the nation where the station is based. This is the only expectation on AM stations in the localness guidelines, as they are not expected to broadcast local material or locally-made programming (in relation to their specific local area), and so are also not expected to broadcast local news.

However, as is also set out in the localness guidelines, Ofcom considers each station on a case-by-case basis and how, if at all, the guidelines should apply to those stations.

The localness guidelines are clear that they are not rules, but instead outline the considerations which may come into play if it becomes necessary to investigate a station's localness output. Many of these considerations are based on listener expectations. Given the evidence referenced above regarding listener preferences for local news and traffic information, as opposed to locally-based presenters, we consider that approving these changes would be in line with listener expectations and the overall spirit of the guidance, despite being a departure from the minimum expectation for AM stations to broadcast 10 hours of programmes during weekday daytimes from within the nation where the station is based.

We also consider that the proposed reduction in programming broadcast from Scotland is offset by the addition of a requirement for local news into the Formats, which is in keeping with the importance which is placed on local news provision within the localness guidelines.

Additionally, as set out above, we believe that this position is consistent with our duties under section 3 of the 2003 Act, in particular the matters Ofcom is required to have regard to under subsection (5), including the interests of consumers in respect of choice and quality of service.

In the case of these five stations, we are satisfied that they can provide a minimum of seven, rather than 10, hours of programmes during weekday daytimes from within the nation where they are based (i.e. Scotland).

This is for the reasons given above, but also because the evidence points towards local commercial radio stations being able, if they so wish, to provide lower levels of locally-made programming while still (if appropriate) providing local news and other local material.

Decision

For all the above reasons, Ofcom has approved these five Format change requests from Bauer Radio Limited. In particular, we are satisfied in each case that one of the relevant statutory criteria necessary for Ofcom to give its consent has been met and in reaching our decision have had regard to Ofcom's policy on format change requests and our general duties towards citizens and consumers under section 3 of the 2003 Act.

March 2023