

**Response to Consultation on the Regulation and Licensing of Broadcast
Content and a Strategy for Digital Radio**

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Executive summary

The Communications Commission published a consultation on the regulation and licensing of broadcast content and a strategy for digital radio in June 2011. A total of 13 responses were received. This paper summarises those responses to the consultation.

- The large majority of respondents agreed with the proposed action in each of the five main questions in the consultation.
- The proposal that the Commission should be given provisions to renew existing licences was well supported.
- The proposal that the Commission should be given specific powers to grant new licences or authorisations for linear and non-linear audiovisual services was generally supported.
- The large majority of respondents supported the notion that specific legal provision should be made to clarify the commitments of the Public Service Broadcaster.
- Amongst those respondents who commented on whether the Commission should encourage self-regulation among non-broadcast (e.g. online, on-demand) material, with the Commission retaining 'backstop' contingency powers, there was near complete agreement with the proposal.
- Overall, there was considerable support for the adoption of a policy of monitoring developments in digital radio.

The Commission therefore proposes to put the proposed measures as appropriate into the new communications legislation currently being drafted, for eventual consideration by Tynwald. The Commission will continue to monitor developments in digital radio, and look into setting up a working group, consisting of representation from the Commission, Government and Broadcasters, to monitor developments and advise on the appropriate digital solution for radio on the Isle of Man.

Background

As part of its strategic review of communications, the Communications Commission commissioned a report by specialist consultants to assess the future needs for audiovisual content regulation on the Island, as well as the possible options – and the Island’s best choice from these – in establishing a policy on digital radio. (The full report *"Key Audio and Audiovisual issues for the Isle of Man Communications Commission"* is available on the Commission’s website, at www.iomcc.im).

The Island’s existing regulatory framework for radio and audiovisual content is currently constructed around three main aims of: a range of services meeting public demand; guaranteeing an amount of public service content; and ensuring that vulnerable audiences are protected from inappropriate material. This framework which dates back to the Broadcasting Act 1993 was based on the assumptions of technical limits on the number of radio and TV broadcast channels (with different types of content being broadcast at different times of day) and that the radio and audiovisual material broadcast was broadly homogeneous in terms of standards and approaches.

However, with technological advances in the amount of audio and audiovisual material available and the ways in which this can be accessed, traditional content regulation is no longer adequate. This is the first strategic issue and points to the re-structuring of the regulatory framework to deal with the issues arising from these changes.

A second strategic issue concerns digital radio. The Isle of Man Government needs to consider the policy options available to the Island regarding the possible development of digital terrestrial radio, and the experience of neighbouring and other countries as this could offer timely lessons.

The Consultation

Following this report and its conclusions, the Commission proposed a number of changes to the regulation and licensing of broadcast content and a strategic policy decision on digital radio, as the next steps in the implementation of its proposed new framework for communications regulation. The Commission then held a public consultation on these proposed changes.

The Consultation document on the *"Regulation & Licensing of Broadcast Content and a Strategy for Digital Radio"* was published on the 9 June 2011 and put forward a series of questions, asking interested parties to submit their comments on any or all of them. The Commission received 13 replies to the consultation, from licensees, the Department of Economic Development, Douglas Borough Council, Isle of Man Chamber of Commerce ICT Committee, Radio Manx Ltd Purpose Trust, parish commissioners, and members of the public. The questions are listed as follows, along with a summary of the responses received.

Question 1:

Do you agree that the Communications Commission should be given specific provisions to renew existing licences at the end of their term, subject to analysis of the market and it being satisfied that consumers have an appropriate range of services available to them?

There was general agreement on this proposal, from the large majority of respondents. Many agreed that it would provide more certainty for licensees if a licence renewal process were in place. Douglas Borough Council commented that the existing set of radio licensees served the Island "reasonably well" and that the Commission should be empowered to renew these licences or issue further ones, conditional on market analysis.

Manx Radio argued that the Communications Commission should also issue and consult on a "vision" for the future of broadcasting on the Island, setting out "what additional services would be considered for licensing", to enable existing and potential licensees to plan for the future.

Overall, the Commission believes the proposal that it should be given provisions to renew existing licences to be well supported. Only one respondent, Mr Paul Moulton, put forward that all radio licences should be put up for competitive tender subject to a set of core service requirements, with all interested parties able to submit bids to provide these licensed services.

Question 2:

Do you agree that the Commission should have specific powers to grant new licences or authorisations for linear and non-linear audiovisual services?

There was broad agreement among respondents that the Commission should be accorded these powers.

Amongst those respondents with qualifications to their agreement, Mr Michael Bathgate emphasised that any new licensees should be required to demonstrate that their proposed services would not adversely affect existing licensees, to avoid the possibility of destabilisation of the existing broadcasting environment.

Manx Radio argued that the development of new non-linear services should be undertaken in the context of a wider awareness of the audiences available on the Island and the commercial limits on the sustainability of an increased number of licensees. They argued that any such proposed new services, seeking licences under the proposed changes, should be subject to the same market impact test as exists for issuing new broadcast licences.

Mr Peter Jackson pointed out that any internet-based services developed would be able to reach a far wider audience, as they would be available around the world, and that this universal availability would only increase in the future, as technology proliferated and improved.

The Department for Economic Development offered the comment that the current process of implementing a strategic direction for the Island's communications regulation should be used to "carve out a commercial advantage" for the Island through implementing a regulatory regime different from those generally on offer in neighbouring jurisdictions, particularly in the UK and EU, in order to attract companies seeking alternative jurisdictions from which to operate.

Overall, the Commission believes the proposal that it should be given specific powers to grant new licences or authorisations for linear and non-linear audiovisual services to be generally supported.

Question 3:

Do you agree that specific legal provision should be made to clarify the commitments of the Public Service Broadcaster?

There was almost universal agreement that the commitments of the Public Service Broadcaster (PSB) should be subject to clarification. Comments on this measure from respondents included a perceived need for clarification on the PSB broadcaster's responsibilities, audience, output and funding arrangements. Mr Michael Bathgate proposed that "a comprehensive consumer research programme be set up to understand what the market expects and wants from Manx radio". Douglas Borough Council suggested that the terms 'public service broadcasting' should be "better defined to make the broadcaster's responsibilities clearer". 3FM proposed that the public subvention for Manx radio "should be ring-fenced for the provision of public service content only".

Manx Radio disagreed with the proposal, stating that there are already sufficient provisions, in the Broadcasting Act 1993, in the establishment of the Radio Manx Purpose Trust, and in their relationship with the Treasury, to ensure that the PSB broadcaster adheres to its public service remit. They also contended that further specific legal provision of the type proposed would "make the position of the Trust untenable".

The Radio Manx Ltd Purpose Trust also pointed out that regulation of the PSB, beyond that provided by the Communications Commission, is undertaken by a number of other organisations, such as the Radio Manx Purpose Trust itself, the Manx Radio board of directors and the Treasury.

Both Manx Radio and the Radio Manx Purpose Trust stated that it is important that the PSB should remain at a sufficient distance from Government in order to maintain its independence, and that this should not be compromised by giving too much regulatory authority to Government agencies.

However, the large majority of respondents supported the notion that specific legal provision should be made to clarify the commitments of the Public Service Broadcaster.

Question 4:

Do you agree that the Commission should encourage a self-regulatory approach to ensuring the adherence to a basic minimum of content standards in relation to non-broadcast (e.g. online, on-demand) material, with the Commission retaining 'backstop' contingency powers?

Manx Radio expressed concern with the idea that different degrees of regulation would be imposed on different content delivery platforms, and suggested that a single code of practice should be developed to cover all content disseminators, including broadcast, non-linear and the press.

Amongst those respondents who answered this question, however, there was near complete agreement with the proposal. 3Fm contended that, with the current rate of technological evolution, the situation "could be impossible to police with limited resources". Douglas Borough Council expressed itself "supportive of the continuation of the self-regulatory approach" but that there would also be "a need for ultimate regulatory powers in case of failure of self-regulation".

Question 5:

Do you agree that the Isle of Man should adopt a policy of monitoring developments in digital radio, so that when a digital solution emerges that fits the needs of the Island's broadcasters and residents it can be cost-effectively implemented?

There was considerable opposition to the idea that the Island should press ahead with the adoption of digital radio, in particular DAB, amongst respondents who addressed this question. Respondents tended to comment on the expense, commercial viability and necessity of such a strategy, as well as the quality and possible impending obsolescence of technologies such as DAB, in their support of the idea of maintaining a watching brief on developments in this area. 3FM contended that DAB "is already outdated and provides no extra benefits to Manx taxpayers", Peter Jackson pointed out that the level of DAB uptake in the BBC's broadcast constituency is "nowhere near" the level at which they had determined they would switch off their FM transmissions, and that DAB is compromised by its inherent quality / capacity trade-off. Douglas Borough Council added the proviso that any such brief should be proactive, so that any future opportunity for making digital radio available across the Island should be identified.

Manx Radio put forward the view that increased radio capacity should be made available for channels to cover motorsport, Tynwald and Manx language output, and that this could be met by DAB. They contended that the Island should therefore be getting more involved in current UK plans to develop DAB radio rather than adopting a policy of monitoring further developments, and that failure to do so could cause the Island to get left behind.

Overall, there was considerable support for the adoption of a policy of monitoring developments in digital radio.

Question 6:

Are there any other aspects of this consultation, the consultants' report or the subject areas in general that you would like to comment on?

There were several other issues addressed by respondents.

- 3FM expressed concern that Manx Radio, as the Island's PSB, was benefitting both from its funding from the Government and support from the BBC, and that this arrangement was not appropriate for an ostensibly commercial radio station. They put forward the idea that Manx Radio should be wholly funded by the BBC as a non-commercial service.

The Commission would point out that there are other examples of public service broadcasters with mixed funding and support in kind (for example, RTÉ and TG4 in Ireland), and that, furthermore, decisions on policy matters such as these are the responsibility of Government and do not fall to the regulator. However, the Commission would also comment that it has encouraged the BBC to supply the sort of help it gives Manx Radio (e.g. training) to other broadcasting licensees on the Island.

- The ICT Committee of the Isle of Man Chamber of Commerce commented that the consultants' report had successfully identified the main issues for a small island community, and that the consultation's questions reflected this.
- The Castletown Parish Commissioners commented that the consultation's questions had been "over complicated", and that the Teletext service available on the Island had deteriorated.

The Commission would point out that, while it tries to be clear in its papers and correspondence, there is often a certain level of technical or specialist knowledge that is required to engage in some of the matters dealt with and consulted upon in these documents. The Commission would also observe that teletext services have become increasingly commercially unviable since the advent of the internet, which offers a far greater amount and variety of information, as well as interactivity. As a result, there is currently no teletext licence holder for ITV (the Public Teletext Licence to broadcast on ITV was revoked by Ofcom on 29 January 2010 for failure to provide news and local non-news information). In addition, the BBC has announced that Ceefax will not be replaced when the analogue signal is switched off in 2012.

- Manx Radio made several general observations on the consultation. These fell into three areas:
 - Firstly, any new licences, including for non-linear services, should be considered in the context of the financial implications they will have for existing licensees and the "specific broadcast needs of the isle of Man".

- Secondly, there should be a single broadcasting code, covering all content, for all disseminators licensed on the Island, including non-linear operators.

The Commission would point out that, whether or not non-linear services are licensed on the Isle of Man, they are already available to consumers on the Island – for example the BBC’s iPlayer, 4oD, Cartoon Network, ITV Player, and so on are all available via the internet. The Isle of Man cannot stop these services becoming increasingly available and used, unless the Island were to block access to them, which would not be proportionate, feasible or popular. Consideration of their financial implications or whether they fit in with some idea of the Island’s “broadcast needs” is also unrealistic. These services will be increasingly available and international in the future, and it is the Commission’s proposal that, with the right regulatory structure and powers in place, the Island can make itself a desirable place for the right kind of new content disseminator to locate in. At the same time, a single code for linear broadcasters and non-linear online operators is both impractical and potentially counterproductive. For example, as such services are non-linear, generally do not use a scarce resource such as spectrum and by definition the consumer chooses what programmes to view and when, rules on scheduling and formats are irrelevant.

- The Commission should take account of “the Island’s specific future requirements” and ensure that the Island is at the forefront of the UK’s plans for DAB roll-out.

The Commission would contend that it has the Island’s needs entirely in mind when recommending that it would be best to study further the development of digital radio before committing to a potentially expensive and possibly unnecessary technology. It would also point out that the commercial radio industry clearly also has reservations about the commercial viability of DAB in its current form and take up, as demonstrated by the progress of the technology in the UK. Furthermore, contrary to Manx Radio’s assertion, the Commission has always been in discussion with the BBC to ensure that the Island is at the forefront of their plans to roll out their DAB services, and will continue to push the BBC on this matter.

- Manx Radio also contended that the points made in their own submission to the initial consultation (on the report into Key Audio and Audiovisual Issues for the Isle of Man) had not been adopted by the Communications Commission into the current consultation.

The Commission would point out that the approach and solutions proposed in the reports commissioned from consultants, and in the Commission’s previous consultations, were broadly agreed upon by the great majority of respondents to those consultations and Manx Radio’s views, while important, were in the minority. The Commission would also point out that responses to all of its consultations are fully considered and all of the points raised are taken into account in reaching its decisions.

Conclusions and Next Steps

The current consultation received a reasonable level of responses, from a varied collection of stakeholders – from licensees to local and national government to industry bodies and private individuals. The proposals consulted upon in this consultation were all supported by the large majority of respondents.

The Communications Commission therefore proposes to undertake the following next steps

- The Commission will include provisions that will enable it to renew existing licences in the proposed new legislation currently being drafted, for eventual consideration by Tynwald.
- The Commission will include provisions that will give it specific powers to grant new licences or authorisations for linear and non-linear audiovisual services in the proposed new legislation currently being drafted.
- The Commission will include provisions that will allow it to clarify the commitments of the Public Service Broadcaster in the proposed new legislation currently being drafted.
- The Commission will work towards provisions bringing about self-regulation among non-broadcast (e.g. online, on-demand) material, with the Commission retaining 'backstop' contingency powers, for inclusion in the proposed new legislation currently being drafted.
- The Commission will adopt a policy of monitoring developments in digital radio, and will look into setting up a working group, consisting of representation from the Government, Broadcasters and the Commission, to monitor developments and advise on the appropriate digital solution for radio on the Isle of Man.

List of respondents to the consultation

Manx Radio

3FM

The Department of Economic Development

The Isle of Man Chamber of Commerce ICT Committee

The Radio Manx Ltd Purpose Trust

Patrick Parish Commissioners

Lonan Parish Commissioners

Castletown Parish Commissioners

Douglas Borough Council

Mr Paul Moulton

Mr Peter Jackson

Mr Michael Bathgate

A. N. Other