# Introduction and Background

* 1. Council of Ministers has been requested to consider making changes to legislation restricting newspapers from holding more than 20% interest in a licensed broadcaster. Consequently, Council of Ministers has agreed that the Cabinet Office should conduct a public consultation on its behalf regarding the request to change legislation in the interests of transparency and good governance.
	2. Isle of Man Newspapers has requested that Council of Ministers considers making the proposed change to the current legislation, arguing that the status quo could be considered out of date and that the proposed change would allow for consolidation in the media sector. It is further argued that such consolidations would help ensure the future sustainability of the sector. Council of Ministers acknowledges these points, but is of the view that there are likely to be a range of views in respect of the proposed changes, it therefore welcomes the views of all interested parties in this regard.
	3. As it stands, an acquisition is not permitted due to statutory restrictions placed on newspapers holding more than a 20% interest in a licensed sound broadcaster within the Broadcasting Act 1993. The Council of Ministers has been requested to consider changing the legislation, by Order, to effectively remove this constraint. This would have the effect of allowing for the acquisition of radio stations by newspapers (something that Isle of Man Newspapers has indicated it would have a potential interest in) and vice versa.
	4. In addition to giving preliminary consideration to the issue of media plurality, the impact of merger and acquisition activities, primarily economic impacts, frequently referenced. The simple fact is that the only outcome of the proposed change of the relevant legislation is to create the opportunity for mergers and acquisitions in the media sectors on the Island.
	5. This document discusses the reasons why the restrictions on newspaper ownership exist. It also contains a preliminary impact assessment of amending the legislation and invites comments from interested parties prior to making any decision on whether to amend the legislation.

# The Legislation

* 1. The Broadcasting Act 1993[[1]](#footnote-1) (the Act) provides the basis for the Authority to issue licences for broadcasting.
	2. Schedule 1 of the Act prohibits a proprietor of an Isle of Man newspaper, a north-west newspaper or a UK national newspaper from holding more than a 20% interest in a locally licensed broadcasting service.

*Interests in newspapers*

*4. (1) No proprietor of an Isle of Man newspaper, a north-west newspaper or a*

*UK national newspaper shall be a participant with more than a 20 per cent interest in a body corporate which is the holder of a licence to provide a sound broadcasting service.*

*(2) No person who is the holder of a licence to provide a sound broadcasting service shall be a participant with more than a 20 per cent interest in an Isle of Man newspaper, a north-west newspaper or a UK national newspaper.*

*(3) Any restriction on participation imposed by sub-paragraph (1) or (2) on the proprietor of a newspaper or on the holder of a licence applies to him as if he and every person connected with him were one person.*

*(4) For the purpose of sub-paragraph (3) the following persons are connected with one another in relation to a particular newspaper —*

*(a) the proprietor of the newspaper;*

*(b) the person who controls the proprietor;*

*(c) an associate of the proprietor or of a person falling within paragraph (b); and*

*(d) a body which is controlled by the proprietor or by an associate of the proprietor.*

*(5) in this paragraph —*

*‘Isle of Man newspaper’ means a newspaper published and circulating in the Island;*

*‘north-west newspaper’ means a newspaper circulating wholly or mainly in the*

*north-west of England;*

*‘UK national newspaper’ means a national newspaper circulating in the United*

*Kingdom.*

* 1. Should a decision be reached that the legislation should be amended, there is a provision within Schedule 1 – Section 6, which would allow for the percentage of interest to be amended by the Council of Ministers, with the approval of Tynwald.

*Amendment of percentage interest*

*6. (1) The Council of Ministers may by order amend paragraph 1(i) or (k), 2(1)(e), 4(1) or (2) or 5(1) or (2) by substituting a different percentage for the percentage for the time being specified there.*

*(2) An order under sub-paragraph (1) shall not have effect unless it is approved by Tynwald.*

* 1. It should be noted that similar provisions in paragraph 4(2) related to the percentage of interest in a newspaper from the holder of a sound broadcasting licence. It is suggested that any change in these provisions should be mirrored to avoid any asymmetric effects on competition and control of media.
	2. There are similar provisions within the Communications Act 2021. The Communications Act 2021 has not yet been fully brought into force, the Authority plans to bring the Broadcasting Related provisions into force in early 2022.

# The Current Situation

* 1. The restrictions on shared interest between newspapers and broadcasters were introduced in order to promote media plurality. In other words, it is ensuring that consumers have access to a range of outlets from which to listen to, or read the news. This is important for not only consumer choice, but ensuring that there are several ‘voices’ being broadcast.
	2. The advancement of the internet has changed the way individuals consume their news content. Whereas traditionally individuals would listen to the news and/or read a newspaper, it is now easier than ever to access news via an online source. This includes content on news outlets websites, but also non-traditional sources such as social media.
	3. There are still concerns around media plurality in today’s digital world. Firstly, online providers have a degree of control over what news stories consumers access; thereby potentially influencing public opinion. This can happen as a result of algorithms determining the prominence of a news story in a social media news feed or search query. Additionally, customer’s access to news from certain sites can be restricted by requiring a subscription to be purchased. It could be reasonably argued that this risk is perhaps more pronounced in a small jurisdiction.
	4. There are currently three radio stations licensed under the Broadcasting Act 1993. These are 3FM, Energy FM, and Manx Radio. In terms of newspapers there are three local newspapers, namely the Isle of Man Courier, the Isle of Man Examiner, and the Manx Independent. There is also a newspaper aimed at residents in the South of the Island called the Southern Chronicle, which is printed every two months. In addition there are a range of magazines created and controlled by a variety of sources. These are detailed further in Section 5.
	5. The Authority is currently assessing a licence application for a 4th radio station named The Sound. As the assessment is ongoing and no decision has yet been made, The Sound has only been included in the initial assessment in its current form, as an online radio station. There are also a number of online media providers on the Island which potentially also need to be taken into account.

# Mergers, Acquisitions, and Media Plurality

* 1. The UK telecommunications and broadcasting regulator Ofcom defines media plurality as:
* Ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises; and
* Preventing any one media owner, or voice, having too much influence over public opinion and the political agenda.
	1. Media plurality is an important element for having informed citizens, able to access media from a range of sources including differing viewpoints and topics, as well as preventing any media outlets gaining too much influence. Mergers and acquisitions may give rise to media plurality concerns depending upon the scale of operations and consumer reach, by reducing the number of available local outlets for news and other journalistic output, whilst simultaneously increasing the market share of the merging outlets. This could also by its nature increase the market power available to that specific business, depending upon the circumstances.
	2. In 2015 Ofcom issued its advice on a measurement framework for media plurality[[2]](#footnote-2), following its reaffirmation to its importance for society. It highlighted three key features for consideration:
* Availability – the number of sources available;
* Consumption – quantification of the consumption of those available news sources; and,
* Impact – assessment of a range of potential impacts.

These can be considered as part of the formal assessment once feedback from this consultation has been received and analysed.

* 1. Amending the legislation would allow for a newspaper to hold greater interests in licensed broadcasters or vice versa, which could result in more mergers or acquisitions. This could lead to a more concentrated market resulting in a louder single voice in the media industry, as well as the resultant increased market power from a competition perspective.
	2. The consequences of any mergers or acquisitions that could result in a significant reduction of choice and/or the creation of a dominant entity should be considered carefully. However, not all mergers and acquisitions are harmful, in many cases mergers can be beneficial for the market through increasing efficiencies, particularly if these are passed onto the consumer in some way. This could be in the form of price reductions or improved quality of the product for example.
	3. In a media sense, some output (including news provision) is already free at the point of delivery; therefore increased consumer benefit could come in the form of quality improvements which improves the end user experience. The potential harm of any merger and acquisition activity also needs to be balanced against potential consumer benefits brought about through increased efficiencies.

# Availability of Media and Potential Stakeholders

* 1. Identifying the available media outlets allows for an understanding of where consumers can access their news from and the number of options available to them. As mentioned earlier this is not a means to an end, it must be considered alongside how and to what extent these outlets are consumed and what the impact on the market overall may be. The geographical boundary has been considered to be the Isle of Man, sources considered should be primarily aimed at an Isle of Man audience. International news outlets have not been included in the analysis since firstly, there is such a wide variety of choice available for consumers when deciding where to consume international news from and they are unlikely to influence consumer behaviours on the Island. Secondly, even though some do report on Isle of Man based stories from time to time, the impact any change in legislation may have on them would be negligible.
	2. Below is a list of all identified stakeholders to a legislation change of this nature. If there are others that have not been identified below, please note this in your response to consultation and they can be considered as part of the impact assessment that follows, where appropriate.

**Local Analogue Radio Broadcasters**

3FM <https://www.three.fm/>

Energy FM <https://www.energyfm.net/>

Manx Radio <https://www.manxradio.com/>

**Locally Targeted Internet Radio Broadcasters**

The Sound Radio <https://www.soundradio.im/>

**Local Printed Media**

Agenda Magazine <https://issuu.com/galleryisleofman/docs>

Business 365 <http://www.business365iom.co.uk/>

Gallery Magazine <https://www.gallerymagazine.co.uk/>

Isle of Man Courier <http://www.iomtoday.co.im>

Isle of Man Examiner <http://www.iomtoday.co.im>

Manx Independent <http://www.iomtoday.co.im>

Manx Motor Mart <https://www.keithurenpublishing.com/manx-motormart>

Portfolio Magazine <https://www.keithurenpublishing.com/iom-portfolio>

The Southern Chronicle <https://www.facebook.com/TheSouthernChronicle/>

**Local Online News Websites**

Finance Isle of Man <https://www.financeisleofman.com/news/>

Gef the Mongoose <https://gef.im/>

IOM Elections <https://iomelections.com/news/>

IOMToday <https://www.manx.net/isle-of-man-news>

IOM TT <https://www.iomtt.com/news>

Island Life [www.Islandlife.im](http://www.Islandlife.im)

Isleofman.com <https://www.isleofman.com/news/>

Isle of Man Government <https://www.gov.im/news/>

Isle of Man TV (Paul Moulton) <https://www.youtube.com/isleofmantv>

Manx.net <https://www.manx.net/isle-of-man-news>

## Consumers

* 1. Consumers are the end user of local journalistic output. Amending the legislation to allow for newspapers to acquire local radio stations may have an impact on the content being produced, in terms of the topics being discussed, or the style of journalism for example. This may have an impact (either positive or negative) on the consumer experience. There may end up being fewer media outlets in the market, resulting in less consumer choice.

## Local Businesses

* 1. Businesses who are currently advertising with any local media company, or may wish to do so in the future are stakeholders in this potential change. A change to the legislation in force could bring about market changes that affect market shares and resultant market power. This could be to such an extent that the entire advertising landscape may change as a result. Conversely, efficiency benefits could pass through to the advertising entity in the form of cheaper rates for example, which could be beneficial to advertisers and increase their reach. The nature of the wider impact can only be assessed after responses to this consultation have been received and analysed. There is more detailed on this topic supplied in Section 6.

## Public Interest Stakeholders

* 1. Public Organisations rely on media outlets to ensure information can be relayed to the public in a timely and appropriate manner. It is important that the news outlets reporting on public announcements are trusted by consumers as this will impact how and whether consumers chose to listen to or read those news items, and the weight given to them.

# Potential Impact

* 1. The impact of a change in the legislation, specifically in light of merger or acquisition activity, would likely differ on a case by case basis. As outlined above, any individual merger or acquisition that would likely impact on a market in a material way, such as outlined above, would likely require consideration on its own merits. As part of the assessment, consideration should be given to the number of available news outlets, how consumers are consuming news from these sources and other contextual factors which may alter the impact.
	2. While this goes beyond the scope of this consultation, it would be remiss to not reflect on them further when considering the proposed legislative change. This can be done in more detail once representations from interested parties and stakeholders have been received and analysed. Views in relation to the matters raised below are welcomed from any interested party.
	3. The first consideration should be the number of available news sources in the Island. If there are a large number of media outlets, a merger or acquisition may not have a great deal of impact as there is sufficient consumer choice available. This is a key consideration when contemplating the proposed change to the legislation. It is also important to look at the wider context however, since looking at the number of outlets in isolation can be misleading.
	4. Secondly, there should be consideration of market concentration as this could have a material impact on the decision to change the legislation or not; for example, in a market with relatively few large players or one or more dominant entities, the risk of such a change could be amplified. Consumer reach may also be an important consideration since this may help to identify the proportion of consumers who may be affected by such a change – whether this is in a positive or negative way, as is the length of time individuals spend consuming the news from the various relevant sources.
	5. When it comes to news consumption, there may be other impacts which are more difficult to quantify and measure, such as to what extent a merger between two parties may affect the trustworthiness of that source for example. This could be in terms of how impartial or reliable individuals consider those sources to be. The fact that this is one of the core reasons for the limits in place in the legislation cannot be overlooked in this regard.
	6. There are a range of contextual factors which can also affect the way in which media outlets portray their journalistic substance, such as:
* governance models – such as trusts, publicly limited companies with shareholders, private companies, statutory corporations;
* funding models – such as advertising revenues, circulation revenues, subscription fees, public funding;
* the potential power or editorial control exercised by owners, proprietors or senior executives within news organisations;
* internal plurality – i.e., how far an organisation enables, supports or promotes a range of internal voices and opinions;
* market trends and potential future developments; and,
* regulation and oversight, in some cases based on statutory obligations .
	1. In addition to media plurality concerns, increasing the concentration of market shares may have resultant impacts on the competitiveness of the advertising market. If a large newspaper was to acquire or merge with a radio station that had significant listenership and consumer reach, there is the possibility that the advertising market could be affected. Whilst newspapers may charge to purchase a copy of a newspaper, radio broadcasting is free at the point of delivery. Both however rely on advertising income and sponsorship to fund their operations to some degree. By increasing their combined market share, it increases the possibility of combined market power of the operations. The basis of competition law is that market power in itself is not generally of concern, it is only if that market power is abused in some way.
	2. The potential impact on competition within the advertising market, and any associated or related markets, does need to be taken into account when deliberating on changing the legislation. However, any alternatives to controlling such outcomes also needs to be kept in mind. In this regard potential anti-competitive actions that may or may not occur in the future could be assessed, and remedied if appropriate, under the Competition Act.

# Available Options and Next Steps

There are 2 options available to Council of Ministers at present:

1. To retain the status quo and not amend the legislation
2. To amend the legislation to allow for radio stations and newspapers to hold up to 100% interest in the other, allowing for acquisitions and mergers to proceed.

All views and evidence from interested parties are welcomed in relation to any of the matters raised in this document. Additionally, comments are invited from interested parties in relation to the following:

1. Do you agree that the legislation should be amended to allow for newspapers to hold a 100% interest in a local broadcaster and for local broadcasters to hold a 100% interest in newspapers?
2. Are there any other media stakeholders that have not yet been identified that you believe should be considered as part of an impact assessment?
3. Do you have any views on the potential for harm or benefits resulting from the proposed change to Broadcasting Act 1993?

Please respond in writing to

Anna Goldsmith

Cabinet Office

3rd Floor, Central Government Offices

Bucks Road, Douglas

By **Tuesday 21st September 2021**

1. <https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1993/1993-0012/BroadcastingAct1993_4.pdf> [↑](#footnote-ref-1)
2. <https://www.ofcom.org.uk/__data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf> [↑](#footnote-ref-2)