EXPLANATORY MEMORANDUM TO

THE LOCAL DIGITAL TELEVISION PROGRAMME SERVICES (AMENDMENT) ORDER 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Stephanie Peacock, Minister for Sport, Media, Civil Society and Youth at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

2.2 Mark Griffin, Deputy Director for Television and Broadcasting Policy, at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Daniel Eastment at the Department for Culture, Media and Sport (email: daniel.eastment@dcms.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The legislation will enable Ofcom to extend, with the consent of the licence holder, the licences for the local TV multiplex and the individual local TV services ('local digital television programme services') for the period of 12 months, and renew those licences that have been extended, subject to the satisfactory completion of a renewal process.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Local TV services have been broadcasting in their current form since 2013 and today they are accessible in approximately 15 million households across the UK. These

services contribute to the wider broadcasting ecosystem by providing local content, including news and current affairs, fostering a sense of place and creating entry routes into the creative industries.

5.2 The licences for the local TV multiplex, and for all 34 local TV services, are due to expire on 25 November 2025. The previous government committed to changing the local TV licensing regime to enable the renewal of the local TV multiplex licence until 2034, to align with the national DTT multiplex licensing legislation made in 2021, and said it would consult on the options for the individual local TV services at the same time. This consultation ran from 7 June to 13 September 2023 and following this the previous government committed to renew the local TV multiplex licence and conditionally renew the 34 individual local TV service licences.

5.3 Secondary legislation to enable Ofcom to take forward the process to renew the licences until 2034 was laid in draft in Parliament in May 2024. Due to the timing of the General Election, this Statutory Instrument was not able to come into force with enough time for Ofcom to complete the renewal process, and run a competitive relicensing process if any of the licences were not renewed, before they expire.

5.4 The timing constraints have meant that Ofcom requires powers to extend the licences to ensure there is enough time to conduct the renewals process. This revised legislation will enable Ofcom to extend the licences for the period of 12 months and run a renewal process which provides an appropriate degree of scrutiny of the incumbent licensees but which is not overly burdensome for those services which are predominantly small and micro businesses.

5.5 Without this legislation the licences would expire and Ofcom would be required to launch and run a new licensing round for the local TV multiplex and individual local TV services, which risks putting a disproportionate burden on these businesses without delivering any tangible policy benefits.

What was the previous policy, how is this different?

5.6 The existing regulatory regime for local TV does not allow Ofcom to renew the licences for the local TV multiplex or the individual local TV services. This legislation will enable Ofcom to renew those licences that have been extended, subject to the satisfactory completion of a renewal process.

5.7 The legislation supports the implementation of the Government's policy for local TV. Namely, that viewers across the UK should continue to have access to local TV services and the economic, social and democratic benefits that they bring.

6. Legislative and Legal Context

How has the law changed?

6.1 The legislation amends Part 1 of the Schedule to the Local Digital Television Programme Services Order 2012 ("the 2012 Order"). The 2012 Order provides that specified provisions of Part 1 of the Broadcasting Act 1996 ("the 1996 Act") and Part 3 of the Communications Act 2003 have effect with modifications in relation to local digital television programme services (described in article 3 of the 2012 Order). In particular, Part 1 of the Schedule to the 2012 Order made modifications to the 1996 Act. The proposed legislation amends the 2012 Order to make further modifications to the 1996 Act as it applies to local digital television programme services. These will allow Ofcom to extend and renew the licences for the local TV multiplex and the individual local TV services.

Why was this approach taken to change the law?

6.2 Legislation is needed to make these changes. The 2012 Order is being amended rather than revoked and re-made as the majority of that Order is unaffected by these amendments.

7. Consultation

Summary of consultation outcome and methodology

7.1 The previous government's preferred approach to renewing the licence for the local TV licence, and renewing or relicensing the individual local TV services was subject to a public consultation which ran from 7 June to 13 September 2023. The consultation received 37 responses. This included responses from current licence holders, media and telecommunications companies and members of the public. Overall, the responses were supportive of the proposed approach. A summary of the consultation responses and the then government's response was published on GOV.UK on 2 February 2024[1].

7.2 In relation to the Department's engagement with the Devolved Governments regarding the proposed approach to renewing the local TV licences, previous DCMS Ministers wrote to the Welsh and Scottish Governments and Northern Ireland Civil Service upon publication of the public consultation in June 2023. DCMS officials subsequently met with officials from the Welsh Government. DCMS Ministers wrote again to the above parties alongside publication of the previous government's response to the consultation.

8. Applicable Guidance

8.1 The licence extension and renewal process will be led by Ofcom as the independent media regulator. DCMS understands that Ofcom will issue guidance regarding their approach to the extension and renewal process after the draft legislation has been laid before Parliament.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business, and the fact that the SI relates to the maintenance of existing regulatory standards. On this basis, proportionate analysis has been undertaken by the Department of Culture, Media and Sport to assess the costs and benefits of the legislation. A De Minimis Assessment (DMA) has therefore been prepared and will be published on GOV.UK.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business. We expect the main benefits of our approach to be the cost savings and the reduced administrative burden of the licence renewal process on incumbent licence holders compared to the alternative option of a full, competitive relicensing process.

9.3 The legislation does impact small or micro businesses as we estimate incumbent providers to all be small or micro businesses. The approach taken minimises the

[1] https://www.gov.uk/government/consultations/consultation-on-the-renewal-of-local-tv-licences/outcome/government-response-to-the-consultation-on-the-renewal-of-local-tv-licences

impact on these businesses by reducing costs and administrative burdens versus a competitive relicensing process.

9.4 There is no, or no significant, impact on the public sector. We have attempted to quantify the costs of this intervention on Ofcom. We have done this by considering the time it would take for incumbent licence holders to prepare and take part in the different renewal processes considered, and by estimating how long it would take Ofcom to review each licence holder and its viability for renewal. Both one-off and ongoing costs were considered in our analysis. We then spread out ongoing costs across the 9 year licensing period to estimate the yearly cost of the preferred option. As it is expected that no new resources would need to be employed by both incumbent licence holders and Ofcom, we estimated these costs to be relatively small.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that Ofcom will continue to monitor the performance of the local TV sector in their role as the independent regulator.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Minister for Sport, Media, Civil Society and Youth, Stephanie Peacock MP has made the following statement: “In my view it is not appropriate to include a review provision in the Local Digital Television Programme Services (Amendment) Order 2024, given the time limited nature of the modifications this instrument makes to the regulatory framework.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument replaces a previous draft SI, which was withdrawn as delays arising from the General Election meant it would not have come into force with enough time for Ofcom to take forward the renewals process and run a competitive relicensing process if any of the licences were not renewed. This replacement instrument gives Ofcom additional powers to temporarily extend the licences for 12 months, thereby deferring the expiry date of the licences, and conduct the renewals process with enough time to run a competitive relicensing process should any licences not be renewed. As the draft SI supersedes another draft SI of the same name, the free issue procedure will apply.

11.2 Article 4(1) of the draft SI addresses what appears to have been an oversight in the Local Digital Television Programme Services Order 2012 by making a modification to the Broadcasting Act 1996 to make clear that, in relation to variations of a local digital television programme licence, the power in section 3(4)(a) to vary the period in the licence does not affect the operation of section 23(1)(b) (which allows Ofcom to serve a notice on a licence holder that the licence is to expire on a specified date).

11.3 Article 1(1) of the draft SI provides for the Order to come into force on the day after the day on which it is made. Where an affirmative statutory instrument will impose duties on people that are significantly more onerous than before, or require them to adopt different patterns of behaviour, the expectation is that it should not be brought into force on a date earlier than appears to give those affected a reasonable chance to adapt to the changes required.

11.4 The SI coming into force does not require licence holders to immediately adapt their behaviour, or put more onerous obligations on them. Although following extension they will need to request and apply for a renewal of their licence, which they currently cannot do, and may need to adapt their behaviour according to the conditions of a renewed licence.

12. European Convention on Human Rights

12.1 The Minister for Sport, Media, Civil Society and Youth has made the following statement regarding Human Rights:

"In my view the provisions of the Local Digital Television Programme Service (Amendment) Order 2024 are compatible with the Convention rights."

12.2 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").