EXPLANATORY MEMORANDUM TO

THE LOCAL DIGITAL TELEVISION PROGRAMME SERVICES ORDER 2012

2012 No.

1. Introduction

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

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

2. Purpose of the instrument

2.1 To enable the provision of digital local television programme services by providing:

- for a new licensing award regime to be administered by the Office of Communications ("OFCOM") for the provision of local digital television programme services; and for the licensing of an operator to build and operate the multiplex on which such services will be carried;
- for certain functions to be conferred on OFCOM in order that certain conditions may be placed in these licences; and
- that local television services will provide a sufficient level of relevant local public service content.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Article 4 of this Order provides that provisions of Part 1 of the Broadcasting Act 1996 and Part 3 of the Communications Act 2003 will have effect in relation to a local digital television programme service with the modifications set out in the Schedule to the Order. This provision does not preclude any general and/or unmodified provisions in legislation which relate to the relevant licences under the Broadcasting Act 1996 from having effect in relation to local digital television programme services, where applicable.

4. Legislative Context

4.1 The Order is being made under section 244 of the Communications Act 2003 ("the Act"). Section 244 of the Act allows the Secretary of State to make an Order to establish a new local television service licensing regime, covering both content

and access to spectrum and to amend relevant sections of Part 1 of the Broadcasting Act 1996 and Part 3 of the Act.

4.2 Section 244(4) sets out conditions that services must meet to fall within the subsection, namely:

(a) they are intended for reception only within a particular area or locality;
(b) their provision meets, or would meet, the needs of the area or locality where they are received;
(c) their provision is or would be likely to broaden the range of television programmes available for viewing by persons living or working in that area or locality; and
(d) their provision is or would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available.

4.3 This Order is part of a package of measures being introduced to create a new local TV framework for the United Kingdom. Accordingly, this order should be considered alongside two further Orders which are being made concurrently with this Order:

- The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2012: this Order will ensure sufficient spectrum is kept available for broadcast of local TV services.
- The Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011: this Order will ensure appropriate prominence for local TV services on Electronic Programme Guides (EPGs).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State for Culture, Olympics, Media and Sport has made the following statement regarding Human Rights:

"In my view the provisions of the Local Digital Television Programme Services Order 2012 are compatible with the Convention rights."

7. Policy background

What is being done and why – the Local TV framework

7.1 The Department for Culture, Media and Sport ("DCMS") is committed to creating a new framework to enable new local television services to emerge across the UK

from 2012 onwards. The framework uses a combination of available regulatory mechanisms, increased market incentives and a limited amount of public funding to enable the emergence of local services.

7.2 Local TV exists in many other countries but has consistently failed to establish itself on a large scale in the UK. This new framework will address market barriers (as identified in the impact assessment attached to this memorandum) to incentivise a new local TV market which will in turn support local democracy and new forms of local public service content.

7.3 Local media has been the subject of several reports and enquiries in recent years. In 2009, OFCOM published a discussion paper on Local and Regional Media and the House of Commons Culture Select Committee conducted an inquiry on the Future for Local and Regional Media publishing their findings in early 2010. These reports stress the importance of local content to audiences. Nine out of ten adults regularly consume some form of local news; 79% of people rate local news stories as important; and 75% of people feel more attached to their city/town/village than those who feel more attached to their region (56%).

7.4 The Government has considered these reports and recognises the need for provision of quality local TV services at a local level. The Government is therefore seeking to enable the emergence of a competitive local TV market and to encourage local production of local content.

7.5 In summary, the framework the Government is putting in place will:

- require OFCOM to make spectrum available on which local TV services may be broadcast;
- require OFCOM to license such spectrum to the holder of a local TV multiplex licence;
- create a new local multiplex service that will carry separately licensed local TV services using the spectrum made available by OFCOM;
- provide OFCOM with the necessary powers to award local digital television service programme licences through a competitive process;
- secure appropriate prominence on electronic programme guides (EPGs: the on-screen menu that lists channels); and
- award a fixed amount of funding from the BBC to support the capital build and to provide a revenue stream for some of the local TV service providers' content (subject to State aid approval and the business plan submitted by the successful multiplex licence applicant).

7.6 The licensing regime for local services will be fit-for-purpose and tailored to ensure that local services are able to deliver content which is relevant to their communities in accordance with a new regulatory regime that is proportionate and minimises burdens on businesses. The Orders being laid in relation to local TV

will secure that a strong multi-faceted foundation is in place to ensure the long-term success of local TV in the United Kingdom.

This Order and its place in the framework

7.7 This Order under section 244 of the Act is an important part of the creation of the new local TV framework. The Order makes modifications, which only apply in relation to local television services, to existing legislation, in order to create the licensing system detailed in the remainder of this Paragraph.

7.8 Provision is made in the Order for a local multiplex licence to be awarded through a competitive process (i.e. licences to be awarded on a non-financial competitive basis, based on an assessment of service and quality), and it is envisaged that this licence will be awarded to a single multiplex operator. The competition for this licence will allow for a range of bids, which could be provided on a commercial or a not-for-profit basis. The multiplex operator will be required to build and operate the necessary transmission infrastructure to carry local TV and may only seek to recover transmission costs from local services on a cost-recovery basis. The multiplex operator will be obliged to carry one local TV content service at every location specified in the multiplex licence.

7.9 Under the framework created by this Order, OFCOM will, in addition to licensing the services to be provided by the multiplex operator, license local TV content services. These services will also be licensed following a competitive beauty contest process. The end-result of this process will be the creation of a series of individual local TV content service licences, and it is envisaged that there will be one such licence for every location specified in the multiplex licence. The local TV content service licensees will focus on producing content for and about their local areas and will be required to meet minimum thresholds in relation to content (i.e. consistent with the "localness" requirements set out in section 244 of the Act); and to work together for the wider interests of local TV (e.g. by considering ways to measure audience viewing numbers at a local level).

7.10 Local TV content services will be required to include a range of programmes which:

- facilitate civic understanding and fair and well-informed debate through coverage of local news and current affairs;
- reflect the lives and concerns of communities and cultural interests and traditions in that area or locality; and
- include content that informs, educates and entertains and is not otherwise available through a digital television programme service which is available across the United Kingdom.

7.11 Local TV content service licensees will therefore produce and broadcast local content which is relevant and meets the needs of people living and working in a

specified area. Each specified area is consistent with spectrum coverage work carried out by OFCOM to determine which identifiable localities (measured with regard to population conurbations) have sufficient spectrum coverage to support a local TV service. The local TV content service licensees will be expected to broadcast some public service content, including party political broadcasts. The services will be prohibited from showing pornographic content and from showing certain forms of advertising content (e.g. psychic TV services and adult daytime chat).

7.12 The local content service licensees will be required to cooperate with each other and with the multiplex operator. They will be required to participate in the formation of a local TV industry body in the interests of local TV as a whole, if they are notified of a requirement to do so by OFCOM.

7.13 The multiplex and local content service licences awarded by OFCOM will be granted for up to 12 years.

8. Consultation outcome

8.1 DCMS consulted on initial local television proposals at the beginning of 2011. The *Local Media Action Plan* consultation[1] ran from January to April 2011. In total, DCMS received 140 responses. This included 21 expressions of interest in operating some form of a network channel (i.e. an overarching channel that would carry the local TV services); and 43 expressions of interest in providing a range of local services. A summary of responses[2] was published on 2 June 2011.

8.2 This was followed by a DCMS consultation on final proposals in *A New Framework for Local TV in the UK*[3] on 18 July 2011 and in *Local TV: Pioneer Locations*[4] on 9 August 2011. Both of these consultations closed on 23 September 2011 and DCMS received over 310 written responses.

8.3 There was support among consultation respondents for an OFCOM 'beauty contest' award process for the local TV content service licences and the multiplex licence. There was support for a local licensing regime which would be tailored to the local TV context. A number of responses were concerned that award of spectrum to a single multiplex operator would create a monopoly situation and limit the coverage possibilities for local services. The Government considered these concerns and has subsequently put in place a number of additional safeguards through this Order. The costs of carriage payable by local services to the multiplex operator will thus be limited to cost-recovery at most. The multiplex operator will also have an obligation to cooperate with local TV providers on

[1] http://www.culture.gov.uk/images/consultations/ConDoc-Local_Media_Action_Plan_190111.pdf
[2] http://www.culture.gov.uk/images/consultation_responses/LocalTV-Summary_LMAPresponses.pdf
[3] http://www.culture.gov.uk/images/consultations/Local-TV-Framework_July2011.pdf
[4] http://www.culture.gov.uk/images/consultations/Local-TV-Locations-August-2011.pdf

coverage, and through the bidding process the multiplex operator will be required to set out proposals for how it intends to promote and support local TV services.

9. Guidance

9.1 This Order does not require OFCOM to produce guidance on the new licensing framework for local television. However, following their consultation on the licensing awards process and the invitation to apply, we expect that OFCOM will produce guidance on minimum content requirements and the degree to which licence conditions could be amended.

10. Impact

10.1 There will be no impact on charities or voluntary bodies arising from implementation of this legislation.

10.2 The local TV licensing award process will be run by the content and licensing teams at OFCOM, who oversee the drafting of consultations, statements, invitations to apply and the assessment of applications. OFCOM anticipates that in accommodating this extra work, there could be some impact on the "business as usual" of the licensing team, e.g. it may take slightly longer to complete the next round of Community Radio licensing. There would, however, be no impact on the overall level of financial resources required by OFCOM.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk. This clearly shows that no burdens are imposed by this framework, but instead that it offers an enabling opportunity for the market to respond to should it want to.

11. Regulating small business

11.1 The Order does not impose any requirements on any size of business, including small firms employing up to 20 people.

11.2 The effect of this Order and the other Orders that create the new local TV framework is that it creates new opportunities for small businesses in a new sector, as explained in the Impact Assessment.

12. Monitoring & review

12.1 The Government will conduct a review in conjunction with OFCOM of the measures a year after they have come into effect, and may undertake further reviews as necessary. The review will assess how many local services have been licensed and progress in encouraging local licensees to form a local TV industry body if this has been deemed necessary.

13. Contact

13.1 Dominic Lake at the Department for Culture, Media and Sport Tel: 020 7211 6957 or email: dominic.lake@culture.gsi.gov.uk can answer any queries regarding the instrument.