EXPLANATORY MEMORANDUM TO

THE WIRELESS TELEGRAPHY ACT 2006 (DIRECTIONS TO OFCOM) ORDER 2012

2012 No.

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 Her Majesty.

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

2. Purpose of the instrument

2.1 To ensure availability of spectrum for the provision of local TV services.

2.2 Specifically, this Order requires the Office of Communications ("OFCOM") to:

- make available one broadcasting channel of geographic interleaved spectrum ("GI spectrum": using gaps between DTT transmissions which arise because the same frequencies cannot be used by neighbouring transmitters due to the potential for interference) for the purposes of local TV at each transmitter in the UK, where possible. Each channel made available should have sufficient capacity to carry a single standard definition television service, on which a local digital television service may be broadcast, as well as additional spectrum on which two further digital television programme services (i.e. 2 standard definition television channels) may be carried; and
- grant a separate wireless telegraphy licence which authorises the establishment or use of wireless telegraphy, when awarding the spectrum to a multiplex licensee.

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

3.1 This Order cross-refers to provisions in the draft Local Digital Television Programme Services Order 2012, which is being laid at the same time as this Order. The making of this Order, and the date on which it is made, is therefore dependent on whether the draft Local Digital Television Programme Services Order 2012 obtains approval in both Houses of Parliament and, if so approved, the date on which that Order is then made.

4. Legislative Context

4.1 This Order is being made under section 5 of the Wireless Telegraphy Act 2006 ("the Act"). Section 5(1) gives the Secretary of State the power to direct OFCOM about the carrying out by them of their radio spectrum functions. Section 5(2) permits the Secretary of State to require OFCOM to secure that specific spectrum is kept available or becomes available for a specified use.

4.2 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 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).
- The draft Local Digital Television Programme Services Order 2012: this Order will create a new local TV licensing regime and amend the existing multiplex licensing regime for the purposes of local TV.

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 Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2012 are compatible with 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 through this Order;
- 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.

Geographic Interleaved spectrum

7.7 In conjunction with Arqiva, the television transmission operator, OFCOM carried out research during summer 2011 looking at those conurbations across the UK with good GI spectrum coverage (GI spectrum is spectrum that is unused by the national DTT broadcasters and does not cause interference to the neighbouring signal). OFCOM identified 65 locations of varying population size that could receive reasonable coverage. The number of locations that will receive local TV will ultimately depend on which applicant for a multiplex licence is successful in being awarded that licence; and how far that applicant's business plan will allow build-out to sites across the country. The OFCOM-led competition will be designed to maximise the number of locations covered by encouraging applicants to bid up from a required minimum build-out of 20 sites.

7.8 OFCOM intends to award 20 local service licences in the first tranche with the potential for all 65 locations across the UK to be served eventually (depending on the viability of services in each location as some may not be able to reach sufficient audience numbers to generate advertising revenue and be commercially viable). An alternative multiplex business proposal could even consider joining additional transmitter locations together to further increase the number of locations to be served, for example in cases where two transmitters are normally used to provide coverage for one town or city.

This Order and its place in the framework

7.9 Through this Order, the Secretary of State is seeking to ensure that sufficient amounts of GI spectrum are made available for local TV purposes. GI spectrum is inherently local; it typically sits between transmitters and the transmitters that make use of it are low-power (to avoid interference with other spectrum bands). This means that GI spectrum can often be patchy and does not easily map over clusters of populations. Whilst this is not well suited for national broadcast purposes, it is significantly more attractive for local broadcast uses.

7.10 This order requires OFCOM to make available sufficient GI spectrum across the United Kingdom for local TV. This will be equivalent to an 8MHz 'channel' of spectrum at each location. It will be left to OFCOM to determine the most appropriate spectrum (i.e. which 8MHz channel per location) to be made available, depending on its discussions with Arqiva, its understanding of the spectrum landscape and the applicant's technical plans.

7.11 The spectrum to be used for local TV purposes will be licensed to successful applicants for a local TV multiplex licence, whose applications will be dealt with in accordance with the process being established through the Local Digital Television Programme Services Order 2012.

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 While the reservation of GI spectrum was not commented on in depth by respondents, it was clear that many respondents expected that OFCOM would make available sufficient amounts of GI spectrum as a given and a key part of the framework. Respondents understood the nature of the spectrum and that it would be beneficial for local broadcasting purposes. A guarantee of availability of this spectrum through this Order will be key to enabling the emergence of a strong local TV market.

8.4 As required by section 6(2) of the Act, the Secretary of State has consulted OFCOM and other interested parties before making this Order. Officials at DCMS and OFCOM have worked together to develop the Government's local TV policy and the drafting of the associated Orders. In November 2011, an exchange of letters between the Secretary of State and OFCOM confirmed that OFCOM is satisfied it has been consulted in line with the requirement of section 6(2).

9. Guidance

9.1 This order sets out a direction for OFCOM. It does not require direct action by any other organisation. OFCOM and other interested parties have been consulted on the direction and no further guidance is planned.

10. Impact

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

10.2 In consequence of making some GI spectrum available for local TV purposes, the aggregate amount of such spectrum available for use in other activities is

[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

necessarily decreased. However, while the amount of available GI spectrum varies by location, typically if a single 8MHz channel is set aside for local TV across the UK, this will lead to a marginal decrease in the amount of GI spectrum of between 5 and 8% in most places. The remaining spectrum could be auctioned by OFCOM on the open market in due course or left licence-neutral, meaning that technological devices could make use of it. The amount of spectrum being used for local TV purposes is therefore highly unlikely to have an adverse impact on any prospective applicants for this GI spectrum from other sectors or providers.

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.

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.