

**EXPLANATORY MEMORANDUM TO  
THE CODE OF PRACTICE FOR ELECTRONIC PROGRAMME GUIDES (ADDITION  
OF PROGRAMME SERVICES) ORDER 2011**

**2011 No. 3003**

**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 require providers of electronic programme guide (EPG) listings to give appropriate prominence when allocating logical channel numbers to local digital television programme services licensed under section 244 of the Communications Act 2003.

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

- 3.1 There are no matters of special interest to the JCSI.

**4. Legislative Context**

- 4.1 This Order is made under section 310(5) of the Communications Act 2003 (“the Act”), which permits the Secretary of State to add a programme service to the list of programme services, specified at section 310(4), which are to be considered as public service channels for the purposes of section 310(2) of the Act. Section 310(2) requires that any code OFCOM draws up, reviews or revises in relation to electronic programme guides (EPGs) under section 310(1) of the Act must include provision requiring EPG providers to give “appropriate prominence” to such channels on the EPG.
- 4.2 This Order adds to the list at section 310(4) a “local digital television programme service”, which means a service falling within a description of service in relation to which provision is for the time being made under section 244 of the Act. A “simulcast local service” is also being added to the list. The effect of these additions is that any linear local TV service licensed under section 244 of the Act which is carried on digital terrestrial television (DTT) and non-DTT platforms (such as satellite and cable) will have the right to appropriate prominence in EPG listings.

- 4.3 This is the first time that this power has been used.
- 4.4 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 Local Digital Television Programme Services Order 2012: this Order will create a new local TV licensing regime and amend the multiplex licensing regime.
  - The draft Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2012: this Order will ensure sufficient spectrum is kept available for broadcast of local TV services.

## **5. Territorial Extent**

- 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 Code of Practice for Electronic Programme Guides (Addition of Programme Services) Order 2011 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 the Office of Communications (“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 Through this order under section 310 of the Act, local TV services (as licensed by OFCOM under section 244 of the Act) will be added to the list of services requiring appropriate prominence in EPGs. EPGs provide information on the content and scheduling of current and future programmes. Conventionally, EPGs list channels in a grid format. All existing public service broadcasters are listed under section 310 as requiring EPG prominence.

7.8 By requiring EPG providers to ensure prominence for local TV, it is expected that local TV will be afforded a logical channel number (LCN) that accords with high prominence when allocated (for example, previous DCMS consultations have

referred to channel 8, which is currently vacant in England, as a desirable LCN on Freeview).

- 7.9 “Appropriate prominence” is enforced through an OFCOM code. This code gives guidance to the practices to be followed in the provision of EPGs. Once this order is made, OFCOM will take into account the requirement for local TV to be accorded appropriate prominence securing compliance with its code.

## 8. Consultation

- 8.1 DCMS consulted on initial local television proposals at the beginning of 2011. The *Local Media Action Plan* consultation<sup>1</sup> 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<sup>2</sup> 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*<sup>3</sup> on 18 July 2011 and in *Local TV: Pioneer Locations*<sup>4</sup> on 9 August 2011. Both of these consultations closed on 23 September 2011 and DCMS received over 310 written responses.
- 8.3 There was a broad consensus from respondents that securing EPG prominence for local TV is appropriate to reflect the public service nature of the content that will be provided; as well as being crucial to assisting the commercial viability of the new local licensees (i.e. greater visibility on EPGs is likely to boost viewing figures, which in turn generates increased advertising revenue). EPG prominence will be important in terms of attracting viewers which in turn leads to financial viability and gives local TV a ‘foothold’ in the broadcasting market.
- 8.4 As required by section 310(6) of the Act, the Secretary of State has consulted OFCOM 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 310(6).

## 9. Guidance

- 9.1 This Order does not require OFCOM to produce specific guidance on EPG prominence of local television.

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<sup>1</sup> [http://www.culture.gov.uk/images/consultations/ConDoc-Local\\_Media\\_Action\\_Plan\\_190111.pdf](http://www.culture.gov.uk/images/consultations/ConDoc-Local_Media_Action_Plan_190111.pdf)

<sup>2</sup> [http://www.culture.gov.uk/images/consultation\\_responses/LocalTV-Summary\\_LMAPresponses.pdf](http://www.culture.gov.uk/images/consultation_responses/LocalTV-Summary_LMAPresponses.pdf)

<sup>3</sup> [http://www.culture.gov.uk/images/consultations/Local-TV-Framework\\_July2011.pdf](http://www.culture.gov.uk/images/consultations/Local-TV-Framework_July2011.pdf)

<sup>4</sup> <http://www.culture.gov.uk/images/consultations/Local-TV-Locations-August-2011.pdf>

9.2 The existing OFCOM EPG code is available at:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/epgcode.pdf>

## **10. Impact**

- 10.1 There will be no impact on charities or voluntary bodies arising from implementation of this legislation.
- 10.2 Local TV will be entitled to appropriate prominence on EPGs. It will be for EPG providers to make judgements about what is appropriate prominence in the context of their own EPGs, but it is not anticipated that existing channels will be displaced from their listings as a result. The order does not require a specific channel number for local TV. It will be for OFCOM to decide whether the approach taken by EPG providers satisfies the requirements of its EPG code.
- 10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at [www.legislation.gov.uk](http://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](mailto:dominic.lake@culture.gsi.gov.uk) can answer any queries regarding the instrument.