

**2012 No. 1842**

**ELECTRONIC COMMUNICATIONS**

**BROADCASTING**

**The Broadcasting (Local Digital Television Programme Services  
and Independent Productions) (Amendment) Order 2012**

*Made* - - - -

*11th July 2012*

*Coming into force in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 244(1), 277(2), 309(2) and 402(3) of and paragraphs 1(2) and 7(2) of Schedule 12 to the Communications Act 2003(a).

In accordance with section 244(2)(c) of that Act, the Secretary of State is satisfied that the making of this Order in relation to services of the description set out in the Local Digital Television Programme Services Order 2012(b) will make possible, facilitate or encourage the provision of services so falling.

In accordance with sections 277(11) and 309(4) of and paragraphs 1(12) and 7(10) of Schedule 12 to that Act, the Secretary of State has consulted OFCOM, the BBC and Sianel Pedwar Cymru.

In accordance with sections 244(9), 277(12) and 309(5) of and paragraphs 1(13) and 7(11) of Schedule 12 to that Act a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. This Order may be cited as the Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012 and comes into force on the day after the day on which it is made.

**Amendment of the Local Digital Television Programme Services Order 2012**

2. The Schedule to the Local Digital Television Programme Services Order 2012 is amended as follows.

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(a) 2003 c.21.  
(b) S.I. 2012/292.

3. In Part 1 (modifications of the Broadcasting Act 1996(a)), in paragraph 10, in the section 19(3A) treated as inserted—

- (a) at the end of paragraph (i), omit “and”;
- (b) after paragraph (j) insert—
  - “, and
  - (k) where the licence holder is a producer within the meaning of article 3 of the Broadcasting (Independent Productions) Order 1991(b), the licence holder provides OFCOM with such information as OFCOM may reasonably require for the purpose of determining whether the licence holder is an independent producer within the meaning of article 3(4) of that Order.”

4. In Part 2 (modifications of Part 3 of the Communications Act 2003), after paragraph 13 insert—

“13A. Part 3 has effect as if section 309 (quotas for independent programmes) were omitted.”

#### **Amendment of the Broadcasting (Independent Productions) Order 1991**

5. Article 3 of the Broadcasting (Independent Productions) Order 1991 (meaning of “independent productions”) is amended as follows.

6. In paragraph (4)(b), for the words “paragraph (4A)” substitute “paragraphs (4A) and (4B)”.

7. After paragraph (4A), insert—

“(4B) Subject to paragraphs (4C) and (4D), any shareholding which a producer has in a local television broadcaster is to be disregarded for the purposes of paragraph (4)(b).

(4C) Paragraph (4B) does not apply if the main activity of the producer is the provision of relevant regulated television services.

(4D) Paragraph (4B) does not apply if—

- (a) the shareholding is in a person who is connected with the local television broadcaster by virtue of paragraph (5), and
- (b) the person—
  - (i) is a broadcaster other than a local television broadcaster, or
  - (ii) is (within the meaning of paragraph (5)) connected with a broadcaster who is not a local television broadcaster.

(4E) For the purposes of paragraphs (4B) to (4D)—

“local television broadcaster” means a broadcaster which provides a local digital television programme service (within the meaning of article 3 of the Local Digital Television Programme Services Order 2012) and no other relevant regulated television service;

“relevant regulated television service” has the meaning given by section 13(1A) of the 1990 Act(c).”

8. In paragraph (5), for the words “paragraph (4)” where they appear for the first time substitute “paragraphs (4) and (4B)”.

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(a) 1996 c.55.

(b) S.I. 1991/1408, as amended by S.I. 1995/1925 and S.I. 2003/1672. That Order has effect as if it were made under sections 277 and 309 of and paragraphs 1 and 7 of Schedule 12 to the Communications Act 2003, by virtue of paragraph 34 of Schedule 18 to that Act.

(c) Section 13(1A) of the Broadcasting Act 1990 was inserted by section 360(3) of, and paragraph 5(1) and (3) of Part 1 of Schedule 15 to, the Communications Act 2003.

11th July 2012

Department for Culture, Media and Sport

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends two previous Orders:

- the Local Digital Television Programme Services Order 2012 (“the Local Television Order”), which provides that specified provisions of Part 1 of the Broadcasting Act 1996 (“the 1996 Act”) and Part 3 of the Communications Act 2003 (“the 2003 Act”) are to have effect with modifications in relation to the provision of local digital television programme services in the UK; and
- the Broadcasting (Independent Productions) Order 1991 (“the 1991 Order”), which defines “qualifying programmes” and “independent productions” for the purposes of sections 277 and 309 of, and paragraphs 1 and 7 of Schedule 12 to, the 2003 Act.

Articles 2 to 4 of the Order amend the Schedule to the Local Television Order, which specifies the modifications with which Part 1 of the 1996 Act and Part 3 of the 2003 Act are to have effect in relation to local digital television programme services.

Article 3 further modifies section 19 of the 1996 Act, inserting a new paragraph (k) into the subsection (3A) treated as inserted into that section. This new paragraph enables the Office of Communications (“Ofcom”) to include, in a licence to provide a local digital television programme service which is held by a producer, such conditions as appear to it to be appropriate to secure that the licence holder provides Ofcom with information to be used for the purpose of determining whether that licence holder is an independent producer.

Article 4 further modifies Part 3 of the 2003 Act so that section 309 of that Act (quotas for independent programmes) does not have effect in relation to the provision of local digital television programme services.

Articles 5 to 8 of the Order are concerned with making changes to the description of the persons who may be regarded as an “independent producer” for the purposes of Article 3 of the 1991 Order. Article 7 inserts new paragraphs (4B) to (4E) into article 3 of the 1991 Order, so that, in certain circumstances, the limits on share ownership referred to in article 3(4)(b) of the 1991 Order do not apply where a producer holds a share in a local television broadcaster (inserted paragraph (4B)).

The limits on share ownership in article 3(4)(b) continue to apply to a producer who holds a share in a local television broadcaster if the provision of relevant regulated television services (as defined by section 13(1A) of the Broadcasting Act 1990) is the main activity of the producer (inserted paragraph (4C)). Additionally, inserted paragraph (4D) provides that those limits continue to apply where a producer has a shareholding in a person who is connected (within the meaning of article 3(5) of the 1991 Order) to a local television broadcaster, and where the person in whom the producer has the shareholding either

- is a broadcaster other than a local television broadcaster, or
- is connected with a broadcaster who is not a local television broadcaster.

Article 8 amends paragraph (5) of article 3 of the 1991 Order so that the provision made by that paragraph in relation to connected persons also applies to inserted paragraph (4B).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the website of the Department for Culture, Media and Sport ([www.culture.gov.uk](http://www.culture.gov.uk)) and is annexed to the Explanatory Memorandum which is available alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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