

EXPLANATORY MEMORANDUM TO
THE TELEVISION MULTIPLEX SERVICES (RENEWAL OF MULTIPLEX LICENCES) ORDER 2021

2021 No. 941

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this statutory instrument is to amend Part 1 of the Broadcasting Act 1996 to allow five national multiplex licences on the digital terrestrial television platform (also known as Freeview) which are due to expire in 2022 and 2026 to be renewed for a further period until 2034. Digital terrestrial television licences give licensees the right to use certain radio frequencies (spectrum) to transmit television services across the UK in a digital format. This statutory instrument also allows for the multiplex licences - if renewed for a further period until 2034 – to be revoked for spectrum management reasons on the condition that the revocation cannot take effect earlier than December 2030.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister of State for Media and Data, John Whittingdale MP, has made the following statement regarding Human Rights: “In my view the provisions of the Television Multiplex Services (Renewal of Multiplex Licences) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 1 of the Broadcasting Act 1996 sets out the regulatory framework for television multiplex licences (known as the Digital Terrestrial Television (DTT) platform or Freeview). Part 1 confers on Ofcom the power to grant and renew multiplex licences. However, the power to renew licences (section 16) can only be exercised on one occasion and Ofcom, having already renewed the licences, do not have a power to renew the DTT multiplex licences beyond their current expiry date. The Multiplex 2 and Multiplex A licences were renewed in 2010 meaning the licences will expire in 2022, and the Multiplexes B, C and D licences were renewed in 2014 meaning they will expire in 2026.

- 6.2 This instrument will modify Part 1 of Broadcasting Act 1996 to give Ofcom the power to further renew the Multiplex A, B, C and D and Multiplex 2 licences up until 2034 to ensure that television services can continue and that there is no disruption to the services broadcast on these multiplexes at the end of their current expiry periods. It will also give OFCOM the power to revoke the licences for spectrum management reasons - where the licences have been renewed until 2034 - on condition that the revocation cannot take effect before the end of 2030.
- 6.3 Without this power of renewal and under the current statutory scheme, Ofcom is required to hold an open competition to award new 12-year licences and would look to consult prior to advertising the licences. However, it is the government's view that the process of an open competition is not in the best interests of the sector or consumers at this time, particularly given the current challenges and uncertainty being faced in the context of the Covid-19 pandemic. Therefore the government is giving Ofcom the power to renew the licences and not to hold an open competition.

7. Policy background

What is being done and why?

- 7.1 Digital Terrestrial Television (DTT) multiplex licences are central to the functioning of the UK's broadcasting system. DTT licences give licensees the right to use spectrum (radio frequencies) to broadcast television services across the UK in a digital format.
- 7.2 The DTT platform is better known as Freeview. It is popular with UK audiences and is an important part of the Public Service Broadcasting (PSB) system. The spectrum allocated to DTT guarantees that content provided by the Public Service Broadcasters (PSBs) is free to air and widely accessible to consumers due to its nearly 99% coverage across the UK.
- 7.3 The Freeview national network is formed of six national multiplexes identified as 1, 2, A, B, C and D. A multiplex compresses and bundles a number of television services into one frequency and transmits it digitally. The frequency is then decoded by either a digital TV or by a separate set-top box. This allows broadcasters to use the spectrum allocated to television more efficiently, giving consumers more choice when watching digital television. Ofcom - the UK's independent communications regulator - regulates the licensees for all of these national multiplexes with the exception of Multiplex 1, which is regulated under the BBC Charter and Agreement and which is therefore out of scope.
- 7.4 Of the remaining five national multiplexes, two of these are set to expire in 2022.
- **Multiplex 2** is licensed to, a joint ITV and Channel 4 subsidiary. It carries the commercial PSB channels ITV/STV, Channel 4 and Channel 5, as well as some of the PSB portfolio channels (e.g. ITV 2, Film 4 and More4).
 - **Multiplex A** is licenced to an ITV subsidiary. It carries only commercial services including some of the commercial PSBs' portfolio channels (e.g. ITVBe, E4 and 5 USA) and some other commercial services (such as QVC and Quest)
- 7.5 The remaining three are set to expire in 2026
- **Multiplex B** is licensed to a commercial subsidiary of the BBC. It mainly carries High Definition services for the PSB channels including BBC one HD;

ITV HD, Channel 4 HD and Channel 5 HD but also carries commercial services such as the Shopping Quarter and TBN UK

- **Multiplexes C and D** are licenced to Arqiva, a communications infrastructure and media services company. These multiplexes carry a range of commercial services including news channels such as Sky News, Al Jazeera and GB News

- 7.6 Ofcom, the UK's independent communications regulator which has responsibility for administering licence renewals, does not have a power to renew the multiplex licences described above, beyond their current expiry dates. Under the Broadcasting Act 1996 Ofcom was only allowed to renew the DTT multiplex licences on one occasion, which occurred for Multiplex 2 and Multiplex A in 2010 and Multiplexes B, C and D in 2014. This statutory instrument will allow the licences to be renewed for a further period up until 2034 and for television services to continue beyond their current expiry dates.
- 7.7 Additionally, in order to streamline the licencing renewal process, under the modifications made to Part 1 of the Broadcasting Act 1996 by this instrument, licence holders will not be required to submit new technical plans or marketing proposals because while these were relevant earlier in the lifetime of digital terrestrial television, this is not the case now that the service is mature; and the power for Ofcom to set a Percentage of Multiplex Revenue (PMR) will also be removed as this has consistently been set at zero for current licensees. PMR is a tax based on revenue to reflect the benefits of holding a licence that the licensee may be required to pay to the Treasury over the course of the licence term.
- 7.8 Licensees of Multiplex 2 currently receive access to spectrum in return for delivering PSB obligations and therefore the modifications made by this instrument will continue to ensure that ownership of Multiplex 2 is contingent on PSB status. ie. that the licensee of Multiplex 2 should be controlled by one or more public service broadcasters.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.9 Ofcom does not have a power to renew the DTT multiplex licences beyond their current expiry date. Without the power of renewal provided by this statutory instrument and under the current legislation, Ofcom is required to hold an open competition to award new licences. It is the government's view that the process of an open competition would not be in the best interests of the sector or consumers at this time, particularly given the current challenges and uncertainty being faced in the context of the Covid-19 pandemic. The competitive bid process is outdated and the criteria determining the basis on which the award of the licence would be made would need to be updated through primary legislation. It is also extremely long and burdensome (requiring a 2 year lead time) which adds to increased uncertainty and costs for the sector.

Why is it being changed?

- 7.10 This legislation will allow the licences to be renewed and for television services to continue to be broadcast on a platform which remains one of the most popular methods of accessing TV content in the UK and which underpins the UK's public broadcasting system. Public service broadcasting plays an important role in the economic, cultural and democratic life of the country. The value of PSB - and the

Freeview platform that continues to underpin it - has been particularly evident during the Covid-19 pandemic, as an important source of news, in countering misinformation, and in bringing the nation together through shared moments.

- 7.11 The long-term renewal of these licences will best support government objectives identified as:
- **Supporting the PSB system and the DTT platform:** Supporting the future shape of PSB and ensuring that the DTT platform continues to benefit consumers.
 - **Regulatory flexibility:** Ensuring that Ofcom has the capability to respond to future events, including any unexpected decline in usage of the DTT platform and changes in future global demand for spectrum currently allocated for DTT.
 - **Deliverability:** allowing for the licence renewal process to be updated in a timely manner.
 - **Harmonisation:** potential alignment of the multiplex licences expiring in 2022 with the multiplex licences due to expire in 2026 to allow for a more consistent and strategic approach to future re-licensing.

What will it now do?

- 7.12 This legislation will ensure that there is no disruption to television services broadcast on the multiplexes on the DTT platform at the end of their current expiry period. In addition, the legislation will support the future shape of public service broadcasting (PSB); to help strengthen the DTT platform so it continues to benefit UK audiences, and to allow for regulatory flexibility so that the government and Ofcom can respond to any future events.
- 7.13 Although we anticipate that DTT broadcast will continue until 2034, the government wants to obtain regulatory flexibility in the licensing process to ensure that it and Ofcom have the capability and flexibility to respond to any unexpected future events that may impact the DTT platform. Therefore the modified legislation will give Ofcom the power to revoke multiplex licences and ensure that any revocation cannot take effect before the end of 2030. We believe this is long enough to provide broadcasters with some level of certainty but allows Ofcom flexibility to act if required. Ofcom will have the ability to revoke licences with the consent of the Secretary of State and following a consultation with the licence holder. Any revocation must be for reasons related to the management of Spectrum. The government will require that revocation cannot take effect before the end of 2030 and a five year notice period must apply.
- 7.14 This instrument will:
- Give Ofcom the power to carry out a renewal of Multiplexes 2, A, B, C and D until 2034
 - Remove the requirement for applicants for a renewal to submit technical plans and marketing proposals.
 - Remove the power for Ofcom to set a Percentage of Multiplex Revenue in relation to the renewed licences.
 - Make ownership of Multiplex 2 contingent on PSB status

- Give Ofcom the power to revoke licences with the consent of the Secretary of State but require that revocation cannot take effect before the end of 2030 and that a five year notice period must apply.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 No consolidation is being carried out.

10. Consultation outcome

10.1 On 18 December 2020, the government launched a public consultation seeking views on the renewal of five national multiplex licences expiring in 2022 and 2026 on the Digital Terrestrial Television (DTT) platform (Multiplex 2 and Multiplex A expiring in 2022; and Multiplexes B, C and D expiring in 2026). The consultation ran for 10 weeks and closed on 26 February 2021. Respondents were asked to provide their views on which of the options below would be their preferred choice for renewal of each of the licences:

- Option (a) Renewal on the same terms as before until 2034
- Option (b) Renewal until 2034 but with the inclusion of a new revocation clause
- Option (c) Renewal for a shorter period until 2026 (not applicable to multiplexes already expiring in 2026 whose expiry date would remain unchanged).
- Option (d) Renewal for a different length of time

10.2 The government did not state a preferred option for the renewals. In addition, respondents were also asked for their views on whether certain licence conditions should be included in the renewals such as whether ownership of Multiplex 2 should be tied to public service broadcasting (PSB) status.

10.3 The consultation received 16 responses in total. 15 of these were substantive responses received from a range of organisations within the TV and broadcasting sector including existing multiplex operators, platform providers, Public Service Broadcasters (PSBs), non-PSB broadcasters, and audience interest groups. One substantive response was sent to the department anonymously.

10.4 The majority of respondents supported renewal for all five multiplexes until 2034 on the same terms as before (under option a), maintaining that this was the best option for delivering against government objectives because long-term certainty would provide sector confidence, ensuring investment in the success and long term health of the DTT platform. In addition, many argued that there was unlikely to be an alternative to DTT which could provide the same benefits (universal, free at the point of use, reliable and secure) which would reach full migration and consumer adoption before 2034.

10.5 There was particularly strong support for the renewal of Multiplex 2 in recognition of its status as a PSB multiplex and support for making ownership of Multiplex 2 contingent on PSB status. Most respondents who offered a view were also in favour of streamlining the overall licensing renewal process.

- 10.6 No respondents supported the inclusion of a new revocation clause for long-term renewals. Many held the view that this would provide only limited certainty to the sector and would undermine confidence and investment in the DTT platform. Only two respondents, were in favour of short-term renewals with one arguing that there should be more focus on a planned transition away from DTT; and the other that any long-term renewal would presuppose the outcomes of wider work looking at public service broadcasting which is yet to report.
- 10.7 Having taken full account of the consultation responses, it is our view that giving Ofcom the power to carry out a renewal of all five national multiplexes until 2034, accompanied by the appropriate regulatory flexibility via the inclusion of a new revocation power will best support the government's objectives. We also believe that making ownership of Multiplex 2 contingent on PSB status and streamlining the licence renewal process also supports government objectives.
- 10.8 The longer-term renewals recognise the government's commitment to the DTT platform by providing stability and certainty to PSBs about the future of their services on the platform and assurance that they can continue to meet their universal access requirements. The DTT platform is viewed as a shared ecosystem and therefore providing regulatory certainty through longer term renewals of all five multiplexes will encourage investment and provide confidence in the future health of the platform.
- 10.9 Short-term renewals appear less well suited with less-compelling evidence that this option supports delivery of key government objectives on PSB and the DTT platform because shorter renewals would diminish certainty and undermine confidence and investment in the DTT platform; with the same issues needing to be readdressed in a few years time.
- 10.10 Whilst the DTT platform will remain important for the years to come, the government does wish to obtain regulatory flexibility in the licensing process to ensure that it and Ofcom have the capability and room to respond to any unexpected future events that may impact the DTT platform. The Government is committed to making the UK a global leader in digital connectivity and wants to encourage innovation and to support advancing the nation's digital infrastructure. The inclusion of a revocation clause reflects this ambition by providing the regulatory flexibility to respond in the event of an unexpected change of circumstances. However, we have reflected on the views expressed by respondents about the inclusion of a revocation clause and as such this order makes a small change to original consultation proposals so that the revocation clause cannot take effect before the end of 2030.
- 10.11 A more detailed analysis of the consultation outcome is available on the gov.uk website.

11. Guidance

- 11.1 Guidance is not required.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An internal De Minimis Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 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 of State for Media and Data, John Whittingdale MP, has made the following statement: “In my view it is not appropriate to include a review provision in the Television Multiplex Services (Renewal of Multiplex Licences) Order 2021 given the time limited nature of the modifications this instrument makes to the regulatory framework.”

15. Contact

15.1 Rose Lubega at the Department for Digital, Culture, Media and Sport email: rose.lubega@dcms.gov.uk can be contacted with any queries regarding the instrument.

15.2 Claire Bradshaw, Deputy Director for TV Team at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Media and Data, John Whittingdale MP, at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.