



department for
**culture, media
and sport**

The role of independent producers and independent production quotas in local TV

DCMS consultation response

May 2012

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

1. The Government recently took steps to enable a local television services to emerge across the UK through the creation of a new local TV framework¹.
2. In February 2012, the Government launched a public consultation² to consider removing specific regulations to lift a burden on new local TV services and encourage greater participation in the local TV bidding process from independent producers, resulting in the long term success and sustainability of this new market.
3. The proposals, as set out in that consultation document, are:
 - a) in relation to local TV broadcasters only, remove the obligation to source 10% of qualifying programme content from independent producers³; and
 - b) amend the definition of “independent producer” in the local TV context only, to remove the ownership ceiling which at present limits the stake an independent producer may hold in a local TV broadcaster⁴.
4. A total of 12 responses to the consultation were received from a range of organisations, including potential local TV providers, independent producers, industry bodies and other interested parties. A list of those who responded is at Annex A.
5. The Government has now laid the enabling legislation to bring these proposals into effect.

¹ Details on the local TV framework and enabling legislation can be found on the DCMS website: http://www.culture.gov.uk/what_we_do/broadcasting/7235.aspx

² Available on the DCMS website: <http://www.culture.gov.uk/consultations/8840.aspx>

³ Definition of qualifying programmes: section 309(1) of the Communications Act 2003

⁴ The definition is currently set out in The Broadcasting (Independent Productions) Order 1991: <http://www.legislation.gov.uk/uksi/1991/1408/contents/made>

Section 2: Summary of consultation responses

Removal of the 10% quota

6. The consultation sought views on the following questions:

- *Would retaining a 10% independent production quota for local TV broadcasters create an unnecessary burden on local TV service providers and limit their programming decisions?*
- *Is the qualitative assessment of the benefits and costs of removing the independent production quota for local TV listed in the impact assessment accurate? What additional data are respondents aware of that may be available to further quantify the benefits and costs of this part of the proposals?*
- *The European AVMS Directive⁵ provides a specific exemption from the 10% quota for local TV, in that there is no obligation on Member States to ensure that the quota is met in relation to 'television broadcasts which are intended for local audiences and do not form part of a national network' (Article 18). Is there any valid reason not to reflect this exemption in the context of the UK's new local TV Framework?*

7. Of those who responded, three respondents supported removal of the quota, one suggested a quota increase, five did not comment and three were opposed to a change (although one of these respondents would be content for the quota to be removed for a 2 or 3 year period, to allow time for local TV business models to be established).

8. One industry body stated that there is a strong demand from independent producers to provide content for local TV services, so local TV licence holders should not have difficulties in finding independent producers willing to make content for them in order to meet the quota. However, other respondents (including potential local TV providers) suggested that a 10% quota would be significant burden for any local operator, given the local TV station cost assumptions, and could present an administrative barrier to long term sustainability.

⁵ Audio Visual Media Services Directive:

http://europa.eu/legislation_summaries/audiovisual_and_media/l24101a_en.htm

- 9. Government believes that the 10% quota could present a significant barrier to the success of local TV services, which are likely to be small scale operations with small programme budgets. The resultant compliance requirements would also be an administrative burden on a market which has historically faced a number of barriers preventing it from succeeding. The Government's intention is to keep the regulatory burdens on local TV to a minimum.**
10. Two respondents raised concerns that an exemption for the independent production quota at a local level could lead to calls to amend the quota for other broadcasting services.
- 11. As stated in the consultation document, removal of the quota in relation to local TV services only is consistent with the AVMS Directive, which permits Member States to disapply the 10% quota only in relation to "television broadcasts that are intended for local audiences and do not form part of a national network." Government's removal of the quota is therefore available only in relation to local TV services; removing the quota in relation to other broadcasting services is not permitted under the AVMS Directive.**
12. One respondent felt that the quota guarantees diversity and plurality within the production sector, ensuring that there is competition in the market between independents and broadcasting production houses. Another stated that a local demand for independently produced content could be a benefit of the new services. One independent producer felt that the quota should be increased.
- 13. Plurality in content provision may not carry the same degree of significance at a local level as it does in the national market, where large television broadcasters can reach millions of people. In addition, removal of the quota will not prevent local TV providers from sourcing content from independent producers; it will simply remove the obligation that this percentage of commissions must be sourced from those producers and so alleviating the cost of compliance on new local services.**

Changing the ownership ceiling

14. The consultation sought views on the following:
- *Would allowing independent producers to become local TV service providers without losing their qualifying independent status encourage independent producers to bid for local TV licences? Are there any negative consequences as a result of this?*
 - *Is there a strong argument to increase the stake that an independent producer can own in a local TV broadcaster from 25% to less than 100% (e.g. to 49%), rather than to remove the ceiling completely?*

- *Do respondents consider that there is a reason not to amend the definition of 'independent producer' to enable such companies to bid to own local TV licenses outright/or to increase the stake they can hold in a local TV broadcaster?*
- *Is the qualitative assessment of the benefits and costs of removing the independent production quota for Local TV listed in the impact assessment accurate? What additional data are respondents aware of that may be available to further quantify the benefits and costs of this part of the proposals?*

15. Of those who responded, three were in favour of increasing the ceiling of ownership to 100%, two would be content to see an increase if independent producer ownership was still capped to a minority stake, four did not comment, and three were against a change (although the response from PACT⁶ incorporated views from a number of independent production companies, some of whom were in favour of a change).
16. PACT felt that removing or relaxing the ownership ceiling would have minimal impact on the number of bids from independent producers. It stated that a survey of its members showed little interest within the independent television production sector in bidding for local TV licences (although just 63 of over 430 members responded). Other respondents suggested that removing the ownership ceiling *would* result in a greater number of bids from independent producers, thereby creating a greater diversity of applicants.
17. **While the Government cannot predict how many independent producers are likely to bid for local TV licences, by doing nothing the opportunity is not there for the market. The Government's intention is to reduce any disincentives for independent producers around owning local TV services, so that independent producers have the same opportunity to bid for local TV licenses as other potential providers.**
18. One respondent suggested that the proposal to remove the ownership ceiling for local TV could lead to pressure from other broadcasters to amend the definition of 'independent producer' in other contexts.
19. **The Government's intention to relax the ownership ceiling is confined solely to circumstances in which an independent producer wants to bid for, and run, a local TV channel. There are no plans to make any relaxations to the ownership ceiling in any other context. In fact, removal of the quota applying to local TV services means that the ownership definition limiting independent producers from holding a greater share in local TV broadcast services is consequently not needed because the definition that limits this stake is directly related to the quota.**

⁶ Producers Alliance for Cinema and Television: the trade association representing independent producers in the UK

20. One respondent expressed concern over the Government's proposal that a change in the ownership ceiling would be subject to the requirement that television broadcasting does not become the main activity of the independent producer, by reference to revenue. This respondent felt that such a requirement would place a disproportionate cost burden on independent producers, and that it would be inappropriate for commercially sensitive revenues of independent production companies to be made public.
21. **As stated in the revised Impact Assessment⁷, the Government will not make reporting on this a requirement; it will be the producer's responsibility (in accordance with the licence) to ensure that broadcasting does not become its "main activity" if it wishes to retain the benefits of independent status.**
22. Two respondents suggested that the stake an independent producer can own in a local TV broadcaster could be increased from 25% but capped at less than 50% to prevent large independent companies from owning local TV broadcast licences.
23. **Government considered this proposal but felt that such a limited change would not be significant enough in achieving the aim of incentivising more independent producers to participate in local TV. This is because bids from independent producers would not offer full flexibility for prospective bidders. As to the prospect of large independent production companies taking up multiple local TV licences, such a company will only be able to do so to the extent that broadcasting does not become its "main activity"; i.e. it will only be able to derive up to 49% of its revenue from broadcasting activity, as opposed to production activity, if it wishes to retain its independent status. Further, existing competition rules will continue to operate as usual within the independent production and broadcasting markets.**

⁷ <http://www.culture.gov.uk/consultations/8840.aspx>

Section 3: Conclusion

24. The local TV market has historically faced a number of barriers preventing it from succeeding. Government is therefore seeking to keep the regulatory burdens on local TV to a minimum and encourage greater participation in the local TV bidding process. Deregulation and enabling commercial opportunity for local TV provision is consistent with broader Government policy in the media market.
25. After careful consideration of all responses to the consultation, the Government has decided to proceed with both proposals and will therefore be introducing secondary legislation to:
- i) remove the independent production content quota for local digital television programme services; and
 - ii) remove the ownership ceiling for independent producers to have full ownership of local TV services without losing their independent status (providing local TV broadcasting does not become their main activity).
26. The changes will be achieved through an Order under sections 244, 277 and 309 of the Communications Act 2003. The Order will make amendments to the Broadcasting (Independent Productions) Order 1991 and the Local Digital Television Programme Services Order 2012 and will:
- i) exempt local TV broadcasters from the independent productions quota which would otherwise apply to them by virtue of section 309 of the Communications Act. This will be achieved by amending the Local Digital Television Programme Services Order 2012;
 - ii) permit an independent producer, as defined in the Broadcasting (Independent Productions) Order 1991, to hold a 100% ownership in a local TV broadcaster provided that the provision of relevant regulated television services is not the main activity of the producer (This will be achieved by amending the Broadcasting (Independent Productions) Order 1991; and
 - iii) enable Ofcom to impose on any independent producer who holds a local TV broadcasting licence, a licence condition requiring that licence holder to provide Ofcom with such information as is necessary for the purpose of determining whether that licence holder is an independent producer within the meaning of the 1991 Order. This will be achieved by amending the Local Digital Television Programme Services Order 2012.

27. The legislation would only apply to local TV services, as defined in the Local Digital Television Programme Services Order 2012. That order gives Ofcom the power to create a new class of local licence: a 'local digital television programme service' (L-DTPS). The removal of the 10% independent production quota will therefore only apply to the content of L-DTPS schedules; and the removal of the ownership ceiling only applies in relation to ownership of L-DTPS licensees.
28. There are currently no plans to change the rules around independent producers and independent production in relation to other types of broadcast licence.

ANNEX A

List of respondents to the consultation⁸

BBC

BECTU (Broadcasting, Entertainment, Cinematograph and Theatre Union)

Digital Nottingham

FifeTay

First Look TV

Latest Homes Ltd

PACT (Producers Alliance for Cinema and Television)

S4C

Scottish Government

Solent Television Ltd

Synergy

Voice of the Listener and Viewer

⁸ Copies of the responses are available on the DCMS website:
<http://www.culture.gov.uk/consultations/8994.aspx>



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