Title: Independent producers and local TV **IA No:** DCMS043 **Lead department or agency:** DCMS **Other departments or agencies:** n/a	**Impact Assessment (IA)** **Date:** 21 May 2012 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries**: Dominic Lake 020 7211 6957 Media Team – DCMS
Summary: Intervention and Options	**RPC Opinion:** Amber

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year**(EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
Zero	Zero	Zero	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

Success of a new Government initiative to facilitate local TV may be put at risk by two existing regulations. Reducing this risk requires Government intervention in two areas:

a) Ownership ceiling: Independent producers cannot hold a stake of greater than 25% in any licensed local television broadcaster without losing their independent status. This could dissuade them from bidding either in partnership (with a collective share of more than 25%) or outright for a local TV licence.

b) Quota system: Existing regulation demands that all UK broadcasters, including licensed local TV broadcasters, must source at least 10% of their content from independent production companies. Keeping this rule means licensed local TV broadcasters could be subject to increased costs and compliance sanction risks.

What are the policy objectives and the intended effects?

Objectives**:** to enable a strong and sustainable local TV market, by removing:

- the regulatory barrier preventing independent producers from having more than a 25% commercial stake in local TV broadcast services without losing their independent status; and
- the regulation that imposes a fixed 10% content quota on the licensed local TV broadcasters.

Intended effect: proceeding in this way would support the nascent local TV market, by:

- creating commercial incentives for independent producers to invest through increased commercial stake in local TV, and thus broadening the number of bidders/expertise; and
- shielding licensed local TV broadcasters from the high cost burdens associated with meeting the 10% content quota (quota removal would also make the UK approach consistent with an EU directive)

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do Nothing: the status quo is maintained. Independent producers could only hold up to 25% stake in any licensed local TV broadcaster without losing their independent status and new licensed local TV broadcasters would be required to source at least 10% of their content from independent producers.

Option 2 (preferred): Deregulate through one new statutory instrument to (a) increase the permitted ownership stake in a local TV broadcaster by an independent production company of up to 100%, so long as the local TV broadcasting activity remains less than the independent production activity; and(b) remove the requirement for local TV broadcasters to comply with the 10% content quota

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 1 year.

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A		**Non-traded:** N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Ed Vaizey Date: 21 May 2012

Summary: Analysis & Evidence Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Zero	**High:** Zero	**Best Estimate:** Zero

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Nil		Nil	Nil
High	Nil		Nil	Nil
Best Estimate	Nil		Nil	Nil

Description and scale of key monetised costs by 'main affected groups'

Government expects that the monetised costs of doing nothing are nil. The Government consulted on a draft impact assessment and policy options seeking specific views on the costs associated with changes to the rules in respect of local TV. The responses provided no new quantitative data. Given that the local TV market does not yet exist, doing nothing means that no new costs are created.

Other key non-monetised costs by 'main affected groups'

If the current **ownership ceiling** is maintained, independent producers would not be able to own a stake of more than 25% in a local TV station without losing their independent status. 'Independent' status currently benefits independent producers by providing them with a guaranteed commissioning revenue stream from broadcasters who must commission at least 10% of their content from independent producers. Doing nothing would mean this quota continues to apply to newly licensed local TV broadcasters. The prospect of losing independent status could discourage independent producers from applying to operate a local TV broadcast service in their own right, or limit the involvement of independent producers in local TV operation because of the ceiling cap of 25%. This could reduce the potential number of applicants for local licences. Retaining the obligation on local TV to acquire a **minimum content quota of 10%** of programming from independent producers could result in in higher costs in order to comply with the quota. There are also potential administrative costs associated with monitoring compliance with the quota regulation. A cost would also be incurred by Ofcom to monitor and enforce compliance of local TV with the 10% quota.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Nil		Nil	Nil
High	Nil		Nil	Nil
Best Estimate	Nil		Nil	Nil

Description and scale of key monetised benefits by 'main affected groups'

Government consulted on a consultation draft impact assessment and sought views on production quotas and ownership. No data was forthcoming from respondents. Doing nothing will have no effect as independent producers will not stand to benefit commercially from a relaxation of ownership rules.

Other key non-monetised benefits by 'main affected groups'

Independent producers do not currently benefit from a local TV revenue stream (because the local TV framework is only now being put in place for the first time). Thus, doing nothing means independent producers could stand to benefit from at least the **10% content quota if this continued to apply**, to local TV services. However, it is unclear what the value of a local TV quota would be (likely to be small as the commercial value of local production will be far less than national broadcast content).

Key assumptions/sensitivities/risks **Discount rate (%)** -

Assume no other changes to the legislation to change the requirements currently around independent producers. However, there might be a cost of compliance on local TV services to meet the quota obligations. There is a risk that retaining the current rules may mean there could be insufficient bidders for local TV broadcast licences (as outlined above) and any successful bidder would encounter the burden of complying with the 10% content quota. This risks the future commercial success of local TV in the UK.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	No	NA

Summary: Analysis & Evidence — Policy Option 2

Description: Deregulate in both areas by:(a) removing a regulatory barrier to enable an increase in the ownership ceiling from 25% of independent producers in local TV services; and (b) disapply the obligation on licensed local TV broadcast services to commission at least 10% of content from independent producers.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	**High:** n/a	**Best Estimate:** n/a

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Nil		Nil	Nil
High	Nil		Nil	nil
Best Estimate	Nil		Not quantified	Not quantified

Description and scale of key monetised costs by 'main affected groups'

Government consulted on this Impact Assessment and sought views as part of the consultation exercise on production quotas and ownership. No quantitative data was forthcoming from respondents.

Other key non-monetised costs by 'main affected groups'

There are no direct costs imposed by the removal of these burdens. However, there may be an opportunity cost for independent producers, because disapplying the **10% content quota** might mean the independent production sector does not automatically benefit from a guaranteed future 10% commissioning revenue stream from local TV services. This would not prevent independent producers from securing local TV commissions; it would simply remove the certainty that 10% of commissions would be ring-fenced for these producers (but conversely, retaining the quota represents a burden on the local TV providers).

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Nil		nil	Nil
High	Nil		Nil	Nil
Best Estimate	Nil		Not quantified	Not quantified

Description and scale of key monetised benefits by 'main affected groups'

Government consulted on a draft impact assessment and sought views as part of the consultation exercise on production quotas and ownership. No quantitative data was forthcoming from respondents.

Other key non-monetised benefits by 'main affected groups'

Removal of the existing **ownership ceiling** would enable independent producers to bid for local TV licences in their own right (or increase the minority stake they could hold). This would increase the opportunity for them to enter a new market. This may increase both the amount and quality of the competition for licences at the award stage. As experienced content producers, independent producers would bring proven TV production skills and the potential for innovative approaches.

Removal of the **10% content quota** would reduce the burden of regulation on small local TV broadcasters by allowing them to source content from anywhere. This has a potential benefit for the local TV broadcasters if, for example, making content in-house is cheaper than commissioning it from an independent producer. This does not prevent larger local TV broadcasters (e.g. London) from sourcing content from independent producers should they wish to. Removal of the 10% content quota would open up competition to fill the gaps in the entire schedule, which would represent an incremental increase in the extent of competition between qualifying and non-qualifying producers in the provision of content. Removal of the 10% quota also reduces the administrative burden for local TV services of complying with the quota. Removing the regulatory burden of the quota would result in lower costs of regulation for Ofcom's monitoring and enforcement of compliance.

Key assumptions/sensitivities/risks — **Discount rate (%)**: -

Assume that the rules at a national level in relation to independent producers will not change. The changes outlined above will be applicable only to local TV services.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	Yes	Out

Evidence Base (for summary sheets)

Overview

The Government wishes to increase the plurality of editorial voice and content provision available to viewers. It also aims to encourage greater interest in local and community affairs. To these ends, it has decided to seek applications for up to 20 licences to supply local TV services to be broadcast (potentially on channel 8) on Freeview. Licences will be issued by Ofcom during 2012 and it is hoped that services will begin by 2015. It is important that these services are commercially sustainable.

The Government's initiative to set up a local TV market in the UK does not replicate the existing regional television structure. Existing regional news services (e.g. those on BBC1 and ITV1 around the national news) will remain. Broadcasting is highly regulated in the UK. Some of the existing legislation was never designed to apply to localised services such as local TV. There is a risk to the commercial success of a newly emerging local TV market which the Government is enabling through separate legislation if some existing regulations remain in place. These regulations were designed to apply to well-established, nationwide broadcasters; not local TV. The regulation in question applies to all broadcasters requiring them to commission at least 10% of their broadcast content from independent producers. This regulation is consistent with similar requirements set out in a European Directive.

Currently there are two regulations, which, unless changed, local TV licensees will have to obey. These are:

- broadcasters must purchase at least 10% of their content from independent producers; and
- producers will lose their independent status (and hence the ability to bid for a share of the regulated independent production quota) if they own more than 25% of any broadcaster.

These requirements were originally introduced to increase the variety of opinions, styles, genres and voices available on national TV; to encourage a viable independent production sector; and to prevent dominance of national TV broadcasters through a single powerful production company. They have proved effective in these respects.

The 25% ownership definition stems from the application of the quota as a way to distinguish between a producer independent of a broadcaster. Given that these rules are designed to apply to the national market (and there is a specific carve out in the European Directive for local TV) permitting independent producers a greater share in local TV broadcasting services than is possible under existing regulations means that commercial opportunities for them and for local TV are increased. The Government supports plurality (in editorial voice and provision of content) where possible. Thus, although the scale of local TV operation is likely to be fairly limited, the Government plans to ensure that where an independent producer is operating a local TV service, the size of its independent production activities must be greater than the size of its broadcasting activities.

Moreover, the 10% quota requirement may prevent local TV broadcasters from finding the lowest-cost solution to provide content. Hence, it is proposed that in the case of local TV only the two legislative barriers that apply to independent producers should be relaxed. The Government recently consulted on removing these specific regulations from applying to licensed local TV broadcasters and a summary is set out below.

Introduction

1. Government has taken recent steps to enable a new local TV market to emerge. Local TV does not exist in the UK on any meaningful scale and so the Government is in the process of implementing separate measures that address the barriers in place to encourage a new generation of local TV services. These services will potentially provide a range of local TV services such as news and current affairs for and about geographically specific areas of the UK.

2. Parliament recently passed three pieces of secondary legislation to: (a) secure sufficient amounts of local spectrum for local TV services; (b) create a new local licensing regime; and (c) offer appropriate prominence on electronic programme guides (EPG). The local TV services will be in addition to the existing regional news services provided on BBC1 and ITV1 (stv in Scotland and UTV in Northern Ireland). The services will be more community-focused and provide content of relevance and interest to the local area.

3. The local TV services are likely to be small, locally-focused enterprises. In order to ensure the long-term sustainability of these new services – which are expected to contribute to local democratic debate and the Big Society – the Government has already begun the process of removing barriers and regulations which are inappropriately burdensome on these services. This includes removing local cross media ownership rules and depending on the nature of the service, statutory advertising restrictions.

4. The independent production sector which supplies a range of content to national broadcasters in the UK forms a well-established and successful part of the UK's media market. For the purposes of the statutory quota, a producer is not regarded as independent if it owns more than 25% of a broadcaster. This limits the scope for independent producers to invest in broadcasting services, including local TV.

5. In 2004, 56% of the market, representing £1.5bn, is accounted for by in-house production, while 44% or £1.1bn comprises external production. 63% of all originated production, or £1.6bn, is based in London and divided relatively equally between in-house and external production companies at 55% and 45% of the total respectively. Out of London, 58% of production is accounted for by in-house production companies[1].

6. The regulatory regime that has helped the independent production sector grow over the past 20 years has largely been due to a system of quotas applying which has meant that licensed national television broadcasters have been required to carry at least 10-25% of independently produced content as part of the scheduled output.

7. In order to sustain this quota system, UK law separates independent producers from broadcasters. Independent producers cannot become a television broadcaster without losing their independent status (hence benefitting from the national commissioning quota that applies). However, European law in the form of the Audiovisual Media Services (AVMS) Directive allows member states to <u>define independent producers and disapply content quotas to local TV broadcast services</u>.

8. The Government has consulted further on the 10% quota and removal of the cap on the ceiling. While most independent producers were keen for a relaxation in the rules which prevents increased ownership in a local TV service they were less enthusiastic about removal of the guaranteed quota applying to local TV services being obligated to commission independently produced content from them. The Producers Alliance for Cinema and Television (PACT) recognised that the quota could pose burdens to a fledgling local TV market and argued that Government could relax the rules in the first few years reinstating them after three years. However, the overriding concern to independent producers was the fear that moves to remove this quota and change the ownership rules may lead to pressure from other broadcasters to change the rules either to benefit from independent producer status or have the quota disapplied.

9. The Government is only focused on relaxing the rules as they apply to local TV services (which are services licensed under section 244 of the Communications Act (2003). Government is not relaxing any other rules in respect of independent production. This stems directly from the AVMS Directive which provides a carve out for local TV broadcast services.

10. PACT's consultation response suggests that there is sufficient interest from their members to provide content for local TV services **to retain the quota:** 67% and 26% of respondents said they would either be interested or might be interested, respectively. Other respondents said they were in favour of relaxing the barriers as they could see the case for doing so would help the new local TV market. Others were concerned that the local TV was likely to be very small and potentially unviable and argued that relaxing the rules would make little difference. Views on the application of the quota to local TV services differed depending on which side of the market the respondents were on (i.e. whether they stood to benefit commercially or be burdened with the quota obligation remaining in place).

11. The following analysis of the impact of the proposed changes is largely qualitative in nature. It is difficult to estimate the magnitude of any changes because the new local TV framework yet to be implemented and so there is no direct evidence base to draw on. The consultation exercise Government ran did not produce any new quantitative data on either costs or benefits. Where possible data is provided to illustrate the current situation e.g. in terms of original *network* programming accounting for most of the spend on original programming compared to the *regional* programming but this should not be taken as being indicative of the expected position in respect of local TV.

[1] Review of the television production sector, statement by Ofcom, London, October 2004

12. The Government also assumes that any changes are specific to local TV services and so will not have any implications for existing national commissioning or independent production quotas that apply to national broadcasters which shall remain fully in place.

Current rules on independent producers and production (1991 Order)

13. The definition of an independent producer in the UK is set out in The Broadcasting (Independent Productions) Order 1991. An independent producer is defined through this order in the following way:

> *(4) In this article "independent producer" means a producer-*
>
> *(a) who is not an employee (whether or not on temporary leave of absence) of a broadcaster;*
>
> *(b) who, subject to paragraph (4A) below, does not have a shareholding greater than 25 per cent in a broadcaster; and*
>
> *(c) which is not a body corporate in which any one UK broadcaster has a shareholding greater than 25 per cent or in which any two or more UK broadcasters together have an aggregate shareholding greater than 50 per cent.*
>
> *(4A) A shareholding greater than 25 per cent which a producer has in a broadcaster shall not have the effect that the producer is not an independent producer if-*
>
> *(a) the producer is incorporated under the laws of a state for the time being bound by the agreement on the European Economic Area signed at Oporto on 2 May 1992 or has his principal place of business in such a state; and*
>
> *(b) the television services which the broadcaster provides are provided exclusively for reception in states which are not for the time being bound by that agreement and are not received directly or indirectly in any state which is for the time being bound by that agreement.*

14. The 1991 Order defines independent producers by reference to having a commercial stake no greater than 25% in any broadcaster. This means that an independent producer can only become a broadcaster if it is prepared to forfeit its 'independent' status. However the Order does include an exemption to enable independent producers to hold a greater shareholding in a broadcaster if the TV service is to be received exclusively outside the EEA – but not if the service is to be received within the EEA, including the UK.

15. Section 277 of the Communications Act 2003 requires public service broadcasters to source at least 25% of their content from independent production companies and section 309 applies a 10% quota to all other licensed digital television programme services.

16. Although the 10% independent productions obligation is consistent with the AVMS requirement, in the UK, this quota relates to the broader existing industrial policy objective of fostering the independent production sector to promote diversity and encourage growth. This was funded by the exploitation of secondary and ancillary rights; and to secure remedies for various competition concerns arising from public service broadcasters' vertical integration and commercial negotiating strength. The AVMS requirement supplemented a number of other interventions which aimed to support the independent production sector (e.g. the licence obligation upon Channel 4 to act as a publisher broadcaster together with the 25% independent production quota for Public Service Broadcasters).

17. Independent producers have benefited at the national level from all of these interventions, which have assisted in the development of a flourishing UK independent sector.

EU Audiovisual Media Services (AVMS) Directive

18. Article 17 of the AVMS Directive makes provision for independent producers and explains the relationship with local TV services. It says: *"Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time…for European works created by producers who are independent of broadcasters."*

19. Article 18 of the Directive says: *"This Chapter shall not apply to television broadcasters that are intended for local audiences and do not form part of a national network."*

20. Articles 17 and 18 of the AVMS Directive have been carried through from the previous Television Without Frontiers (TVWF) Directive, which the AVMS Directive replaced. When the TVWF Directive was transposed into UK legislation, the exemption for local TV was not included.

21. Under domestic legislation, therefore, the 10% independent production quota currently applies to all digital television programme service broadcasters in the UK at a national, regional and local level (as explained above, a separate 25% quota applies in the case of Public Service Broadcaster channels).

Local TV framework

22. The Government has developed a new local TV framework which is being implemented. This was developed in response to the historic market barriers which had worked against those interested in running local TV services, coupled with a legislative regime geared to national broadcasters.

23. The framework being put in place (secondary legislation was passed in February 2012) allows Ofcom to implement a new local licensing regime for local TV. It will license individual standalone local services, each serving a different location. The first licences are expected to be awarded to large conurbations (e.g. Cardiff, Manchester, London, etc.).

24. The new local TV services will be at a new channel number, broadcasting on DTT with content relevant to the local population. This might include news, sport, current affairs, etc. The local stations will be able to source content through any method they wish – subject to existing Ofcom rules – and so could broadcast a mixture of content produced in-house and content procured from external producers.

25. Ofcom is due to launch the licensing award process very soon (April/May 2012). This will test the market . The Government is keen to ensure that the barriers to participation in bidding to operate local TV stations are reduced and believes that there is no reason why independent producers should be prevented from bidding and holding a local TV licence thereby increasing their commercial opportunities and at the same time, drawing into the new local TV market, experienced television production businesses.

Problem under consideration

26. The problems are two-fold: the first is that existing legislation currently caps the ownership stake an independent production company may have in a broadcaster to no more than 25% (otherwise it is no longer an independent producer). This cap applies to all broadcasters regardless of whether those services are national or local in nature. The second is the 10% content quota that applies to national broadcasters. The quota will apply to the new generation of local TV services because the UK has not dis-applied the quota to local TV services as explicitly permitted by the AVMS Directive.

27. The Government's current preference is to deregulate in both areas as they apply to local TV. However, there are alternative scenarios where just one of the deregulatory measures is implemented or the Government chooses to do neither.

28. The Government has considered the options of just doing one or the other. However, given the provisions in the AVMS Directive, the logic of removing the ceiling extends from removing the quota.

29. Defining the concept of 'independence' to support the national commissioning quota of independent production applying to broadcasters sits under The Broadcasting (Independent Productions) Order 1991. This order is consistent with Article 17 of the AVMS Directive which applies a similar rule to broadcasters. The 1991 order defines an independent producer to enable a demarcation between producer and broadcaster saying that "…a producer- [is someone] who does not have a shareholding greater than 25 per cent in a broadcaster". The order also applies the same in the reverse; a broadcaster cannot hold a share greater than 25% in an indie. Article 18 of the AVMS Directive says that "this [the independent quota]…shall not apply to television broadcasters that are intended for local audiences and do not form part of a national network". By removing the 10% quota from applying to local TV services (consistent with AVMS), the logic of keeping in place a definition that seeks to cap independent producer ownership to less than 25% that exists to support the definition of the quota is unnecessary.

Rationale for intervention

Increasing the permitted ownership ceiling

30. It is important to maximise the number of possible bids at a local level. Plurality in content provision (enabled by the independent producer legislation provisions) does not constitute the same degree of importance at a local level as it does in the national market dominated by large television broadcasters who have the potential of reaching millions of people through their scheduling.

31. Many national media can counter the lack of plurality at a local level because national media is available locally but local media is available less at a national level.

32. Deregulation and enabling commercial opportunity for local TV provision is consistent with broader Government policy in the media market. In April 2011, Government removed the local cross-media ownership rules which placed restrictions on the circumstances in which local media entities (such as local newspapers) could simultaneously own other media entities (e.g. local radio licences, regional Channel 3 licences) at the local level. Allowing the independent sector to have a greater role in the provision of local TV through production and increased ownership will offer new opportunities to both sides of the market.

Removing potential burdens on local TV

33. The majority of original commissioning in the UK is at the national 'network' level, i.e. programming that is for broadcast as part of a national network service rather than for specific regional services. This is reflected in commissioning spend. In 2010 the five public service broadcasters[2] spent £2.5 billion on first-run originated output. This compares to a total spend of £266m on originated national/regional output by BBC, ITV plc, STV and UTV.

34. However independent producers can (and do) compete to supply both network and regional commissions. Given the total amount spent on original commissions it can thus be important for producers to retain their qualifying independent status.

35. It is also the case that around 30-40% of all network production by the Public Service Broadcasters is produced outside London. In value terms, in 2010, the figures were: All BBC – 37.8%; ITV1 – 38.8%; Channel 4 – 39.4% and Five – 26.4% (CMR 2011). This comes from a mixture of London-based independents producing outside London as well as from independent producers who are based and also produce outside London. These figures suggest a reasonably strong production base outside London which could in turn be well placed to participate in the development of local TV in the UK.

36. Exempting local digital television programme services from the 10% independent production content quota would not prevent independent producers from bidding for local TV commissions; it would simply remove the *guarantee* that 10% of commissions would be ring-fenced for these producers alone at the local level.

37. It is likely that local TV services broadcasting on DTT will be relatively small scale operations: for instance, the Shott review[3] and a later Enders Analysis report suggested that local TV services could operate at a reasonable cost of between £500k and £1.2m per annum. In that situation a requirement to comply with a 10% independent production content quota could impose significant strategic and administrative burdens on a local TV service. There would be the need not only to take the content quota into account when making decisions about on-going programming strategy but also there would be the need to have in place systems to monitor compliance with the quota. Exempting local digital television programme service providers from the 10% independent production quota would therefore give local TV service providers some greater flexibility in their programming decisions and reduce the administrative burden.

38. This approach may also reduce the cost burden for local TV channels as it may be more cost effective for small broadcasters to produce their content in-house. Furthermore it is possible, given that local TV stations are likely to have very small programme budgets (see above reference to Shott review),

[2] BBC, ITV, Channel 4, Five and S4C
[3] http://www.culture.gov.uk/publications/7655.aspx

39. Whilst the Government understands that local TV services may indeed choose to commission programming from independent producers, it appears to be disproportionate to automatically expect this.

40. Overall, dis-applying the quota for local TV is entirely consistent with the European Directive by enabling member states to dis-apply the quota to local services. It also restores the previous position whereby there was no quota obligation in relation to local analogue services.

Lowering barriers to participation in the awards process for local TV station licences

41. It is important to reduce barriers to different industry players participating in the licensing award process for local TV to ensure there is a robust competitive process operating, this potentially offers better services for audiences as a result.

42. Under the current rules, an independent producer that wished to be involved in operating a local TV station would be prevented from bidding in its own right – unless it was also prepared to give up its qualifying independent status if it was successful. This could affect an independent producer's ability to secure programme commissions from other (non-local) broadcasters. Given the importance of this revenue stream, this may discourage independent producers from applying to run (wholly or jointly) local TV services.

43. In order for an independent producer to participate in the bidding process for local TV and retain its qualifying independent status it would have to be a minority shareholder (owning 25% or less) in a partnership with at least one other partner. Any consortium made up of independent producers would have to be made up of more than 4 partners to ensure that each remained below the current ownership ceiling of 25%. The process of setting up and managing a (successful) joint venture or multi-partner consortium is obviously more complex (and is likely to require significantly more time and management effort) than simply being able to bid on a stand-alone basis[4].

44. Enabling independent producers to bid for and operate local TV services in their own right (or at least with an ownership stake greater than 25%) would provide them with greater flexibility in terms of choosing how to participate in the provision of local TV services and could enable a greater number of bidders for local TV services. The change to the ownership ceiling for local TV services would not force independent producers to bid in their own right – they could still choose to be part of a partnership or consortium – but it would enable them to adopt different approaches in different parts of the country according to local factors if they wished.

45. If an independent production company sought to acquire numerous licences then the impact of this at the local TV level will not be significant in comparison to the same happening at the national level. The regulations exist at a national level to ensure plurality in broadcasting and the success and plurality of the independent production market. The size and reach of the local TV market including production is likely to be very small in comparison to the national market and therefore the same assurances at this level are not necessary. However, in order to fully comply with European rules, the Government is putting into place a requirement that if an independent producer wishes to maintain the benefit of its independent status at the national level, then the turnover of its independent production activities must be larger than the totality of its local TV broadcast activities. In addition, the licensing regime administered by Ofcom awards licences on a case by case basis and any transfer of licences has to be approved by the regulator. Together, this means that any attempts of dominating this market will be subject to the usual scrutiny of the regulator.

46. If an independent producer owned a number of local TV services there might also be greater scope for sharing programming and resources between the different services (as suggested in the final Shott report).

4 At the same time we do recognise that a consortium approach would be a way of sharing the risks involved in bidding for and operating a local TV station.

Policy objective

47. The Government wants the local TV framework to be successful. In particular, it wants to attract the largest number of bidders possible and to provide the opportunity for different bidders to compete on an equal footing.

48. Because the Government wants local TV to succeed in the long-term, it wants to remove unnecessary burdens which would be imposed on local TV providers where possible.

Description of options considered

49. The provisions which dictate the ownership restrictions for independent producers and the quota for content are both contained within legislation. Secondary legislation is the only way to achieve the policy outcomes outlined above, but both measures could be disapplied through just one statutory instrument (an Order under the Communications Act 2003).

Policy Option 1: Do nothing

50. Local TV content broadcasters could be burdened by content quotas which were not intended for use at this local level. If the Government does nothing, then the content quota would still apply to local TV services on DTT. Local TV services would be obliged by law to source at least 10% of their content from independent producers. This could represent a significant, unnecessary and perhaps even unachievable burden on local TV licensees.

51. Existing rules may prevent independent producers from making full use of the opportunities afforded by the new local TV framework. When local TV licences are advertised, independent producers may choose not to bid because of a concern that if they win the competition for the licence they will lose their ‘independent’ status which in turn may impact on their ability to get commissions for national level programming. This means that they cannot take full advantage of the new market opportunities being created by the new local TV framework. A number of independent companies may potentially be well placed to provide local TV due to their particular connections to a local area.

Policy Option 2: Intervene to remove regulation in relation (a) to the independent production content quota for local digital television programme services and (b) to the ownership ceiling precluding independent producers from having more than a 25% share in a local TV licence whilst maintaining their ‘independent’ status.

52. Intervention through secondary legislation would mean that we could remove the undesirable outcomes outlined above, i.e. (a) remove the content quota such that local TV content broadcasters are not required to source at least 10% of their content from independent producers which, as outlined above, may prove to be a significant, unnecessary and perhaps even unachievable burden on local TV licensees; and (b) remove the ownership ceiling which, as outlined above, is likely to discourage independent producers from applying to become local TV broadcasters. As mentioned above, the Government considered alternative options of just doing one or the other, but the two are logically linked.

Costs and benefits of each option (including administrative burden)

Option 1: Do nothing

53. The ‘Do nothing’ option is presented as a counter-factual option. In this case, there would be no change to the existing regime as set out in the statute.

Costs

54. In the current status quo, independent producers would not be able to fully take part in the local TV market. They would not be able to both bid in their own right and retain their independent status. This would mean that they would not be able to participate fully in the opportunities offered by local TV compared to other industry players (e.g. broadcasters with their own in-house production capabilities).

55. Local TV providers would be required to fulfil their obligation to procure at least 10% of their content from independent production companies. This could represent a potential financial and/or

56. Under this option, there is a risk that there might be fewer bidders for local TV with less diversity in the range of applicants and so some genuinely innovative approaches might not come forward.

57. It is possible that local TV services might find it difficult to attract sufficient interest from independent producers in commissions (due to small budgets); this could result in local broadcasters failing to fulfil their quota obligations or distorting their programming strategy in order to comply with the quota.

Benefits

58. The independent sector would still benefit from the range of new local TV service providers who would be obliged to commission at least 10% of their output from independent producers; this would represent "new" money coming into the sector, although the value of this revenue stream remains unclear. Independent producers would also still be able to have part-ownership of a local TV broadcaster, as long as their ownership stake did not exceed 25%.

Option 2: increase the ownership ceiling which currently prohibits independent producers from owning more than a 25% share in a local TV licensee without losing their independent status; and disapply the 10% independent production content quota for local TV

Costs

59. Removal of the 25% ownership ceiling for independent producers may lead to a small number of powerful producers becoming proprietors of local TV licences. This may reduce the variety of voices and content that is made available. If a particular producer gains control of many local licences this result might take on more than local significance.

60. The independent sector would lose a guaranteed 10% commissioning revenue stream from local TV services. This would not prevent independent producers from securing local TV commissions; it would simply remove the certainty that 10% of commissions would be ring-fenced for these producers.

Benefits

61. Increasing the ownership ceiling would allow independent producers to bid for more of a stake in local TV licences. This could increase competition at the bidding stage, i.e. it will potentially lead to an increase in the number and range of bidders for local TV licences. There is thus the potential for a greater diversity of services and approaches in the provision of local TV services, which could in turn benefit consumers.

62. Exempting local digital television programme services from the 10% independent production content quota would mean that local TV operators are not obliged to source at least 10% of their content from independent producers. However, it is assumed that in many instances, local TV would choose to source content from independent producers. This option simply removes the obligation from local TV that forces them to source such content, thus reducing the regulatory burden upon these services.

63. Implementing this option could increase the degree of competition among content providers in that 'non-qualifying' producers (i.e. non-independents) would be able to compete for an additional 10% of commissions that they would otherwise have been prevented from bidding for if the quota were in place, but it is expected that this would only represent a small change. There will initially be no costs or benefits because a local TV market does not yet properly exist. Going forward, we think there will be benefits overall as the market develops but these cannot be quantified because it is a new market and insufficient data exists.

Risks and assumptions

64. This impact assessment is based on the assumption that the rules governing independent producers at the national level will not change. This IA is based only on the rules as they will operate within the new local TV framework.

Option 1: Do nothing

65. Failing to exempt local digital television programme service licensees from the 10% independent production content quota, would make it more difficult to remove or increase the 25% ownership ceiling for independent producers. This is because a local TV broadcaster which was owned by an independent production company would effectively be able to meet the quota with its own in-house commissions thus undermining the purpose and integrity of the independent production quota.

66. It is possible that limited budgets could prevent local TV services from attracting sufficient interest from independent producers in commissions; this could result in local broadcasters failing to fulfil their quota obligations, leaving them open to potential sanction.

67. Retaining the 25% cap on the stake an independent production company can hold in a local TV service might limit the number of applications for local TV licences in some areas.

Option 2: Increase the ownership ceiling which currently prohibits independent producers from owning more than a 25% share in a local TV licensee without losing their independent status; and disapply the 10% independent production quota for local TV services

68. The benefits of this change will depend to an extent on by how much the ownership ceiling is increased. A limited change (e.g. to 49%) may not be significant enough to incentivise more independent producers to participate in local TV as it would still require a joint venture or consortium bid. A couple of responses to the consultation exercise indicated that a limited measure in this way might be suitable given overall concern about upsetting the broader quota regime, Government's view remains that this is only a part-way measure unlikely to make a material difference in the market as well as Government's clear intention that the independent production regime remains otherwise unchanged.

69. Given the AVMS carve out for local TV, the Government will make it a requirement in the proposed legislation that will create the changes to require the activity of the independent producer will need to outweigh the local TV broadcasting activity in order to retain independent status. The Government will not make reporting on this a requirement; this will be for the producer to ensure that the two activities remain separate.

70. The independent production sector would not benefit from guaranteed "new money" coming to the sector from a range of new local TV service providers seeking to commission at least 10% of their output from independent producers. Independent producers may object to this proposal as a result. However whilst the proposal does not guarantee income for the sector neither does it prevent independent producers from seeking these commissions.

71. Niche national services may consider that local TV services with potentially sizable audiences may have an unfair regulatory advantage if local TV channels have a comparable audience share but no quota obligations.

Micro-business

72. Micro-businesses are not exempt from this Impact Assessment as the proposed measures are de-regulatory. Burdens are not being imposed through these measures. Micro-businesses which are independent producers could benefit from the increased ownership ceiling, allowing them to have more of a stake in local TV broadcasters.

Summary, preferred option and implementation plan

73. The Government is implementing a new framework for local TV. It wants to remove unnecessary burdens and restrictions relating to independent producers and local TV. This will help to ensure the long-term success and sustainability of local TV.

74. The preferred option is to remove both restrictions, so that:

- independent producers will be permitted to own a larger stake in local TV companies (up to full ownership).

- the 10% content quota would be removed from local TV services – which would mean the local content broadcasters would not be required to source at least 10% of their content from independent producers.

75. The Government has consulted on the above proposals. Stakeholders have contributed views and we have considered any impacts intended or otherwise on the changes suggested above.

One in - one out

76. This measure counts as an out with a value of zero. Government consulted on the costs and benefits of the proposed measures, but as the local TV market does not properly exist, it has not been possible to quantify the equivalent annual net cost to business.