
Request for change of licence conditions relating to the provision of news output on Channel 5

Our assessment of the request

CONSULTATION:

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1. Overview

What we are proposing – in brief

We are proposing to accept the licence variation requested by Channel 5 in relation to its news provision requirements.

Channel 5 has requested the removal of the requirement to include at least one news programme in the mid-evening and a reduction to the requirement to include in each calendar year at least 120 hours of news programme between 18:00 and 22:30 (i.e. peak-time) to 20 hours. Channel 5 has requested this change in order to facilitate the replacement of the two thirty-minute news broadcasts at 17:00 and 18:30 in its current evening schedule, with a one-hour-long news broadcast from 17:00.

We are seeking responses on these proposals from stakeholders by 30 July 2021 which we will consider before taking our decision on whether to accept Channel 5's request. We intend to publish a statement on this in September this year.

2. Background

Introduction

- 2.1 In this section we set out the background to the issue we are consulting on – the relevant licence obligations, the request we have received and our legal framework for assessing the request.

News programming obligations

- 2.2 The [Channel 5 licence](#) is held by Channel 5 Broadcasting Limited, which is part of the Viacom CBS group. We refer to the licensee as ‘Channel 5’ throughout this document.
- 2.3 The public service remit of Channel 5 requires it to provide a range of high quality and diverse programming.¹ In addition to fulfilling that remit, Channel 5 must also comply with specific licence obligations on the programming and productions to be included in its service. These obligations are intended to ensure that Channel 5 fulfils its remit and makes a sufficient contribution to the public service broadcasting (PSB) purposes.²
- 2.4 The PSB obligations include core genre obligations about specific types of programming to be broadcast such as news, as well as specific content to be commissioned or produced, for example the amount of programming made outside London. The issues in this document relate to the core genre obligations for news; specifically the provision of news and current affairs at both peak viewing and other times. In setting these obligations, Ofcom must ensure the objectives set out in section 279 of the Communications Act 2003 (the ‘**2003 Act**’) are achieved. These include securing that high-quality news programmes are broadcast at appropriate intervals throughout the day.
- 2.5 In May 2013³, we consulted on whether the existing news obligations for Channel 5 should be maintained at existing levels or amended for the duration of the 10-year licence period running from 1 January 2015 (the ‘**2013 Consultation**’). At that time, we acknowledged the decline in value of PSB status for Channel 5 due to the emergence of many digital channels with whom they must compete for viewers’ time. The majority of respondents to the consultation favoured maintaining the existing levels of news obligations, but some suggested that it might be appropriate to review in future in order to maintain a balance between the obligations and benefits of PSB status.
- 2.6 In July 2013, we set out our decisions in relation to the news programming obligations for Channel 5 ahead of the new licensing period (the ‘**2013 Statement**’).⁴ We decided that the news obligation levels set out in the Channel 5 licence were appropriate and did not

¹ S.265(2) of the Communications Act 2003.

² These are the public service purposes set out in s.264(4) of the Communications Act 2003.

³ [Channel 3 and Channel 5: proposed programming obligations Proposals for amendments to obligations for Channel 3 and Channel 5 ahead of a new licensing period](#), 21 February 2013.

⁴ [Channel 3 and Channel 5: Statement of Programming Obligations Amendments to obligations for Channel 3 and Channel 5 ahead of a new licensing period](#), 23 July 2013.

impose any changes. We did however consider specific aspects of the news programming obligation, including the definition of “peak viewing time”, but ultimately these did not change.

- 2.7 In October 2014, as part of our review of a change of control of the licensee as a result of Channel 5’s acquisition by Viacom CBS Networks UK (**‘Viacom CBS’**), the news obligations were amended, and these remain the requirements today. At the time of the change, it was agreed with Channel 5 that it would increase: (i) the requirement to broadcast a minimum amount of news programmes from 260 to 280 hours per year, and (ii) the requirement to broadcast a minimum amount of such hours in peak times from 100 to 120 hours per year.
- 2.8 Channel 5’s current licence runs until the end of 2024. The process for renewal will start in the coming year, and the first step will be a report to the Secretary of State for Digital, Culture, Media and Sport (DCMS) on whether licensees can contribute to PSB purposes at a commercially sustainable cost over the next licence period. Any new licence will then be granted by summer 2023 and commence at the start of 2025.

Request from Channel 5 to amend the licence condition concerning news provision

- 2.9 On 4 June 2021, Viacom CBS wrote to Ofcom on behalf of Channel 5 Broadcasting Limited, which is the holder of the Channel 5 licence, to formally request a change to the conditions set out in that licence relating to the provision of news.
- 2.10 Channel 5 has requested this change in order to alter its evening schedule by broadcasting a one-hour-long news broadcast from 17:00, replacing the two thirty-minute news broadcasts at 17:00 and 18:30.
- 2.11 A non-confidential version of this request is available on our website.⁵

Channel 5’s current licence conditions

- 2.12 Under the current conditions of the Channel 5 licence (Condition 13 and Paragraph 4 of the Annex, Part 1), Channel 5 must deliver 280 hours of national and international news per year, of which 120 must be broadcast between 18:00 and 22:30 (i.e. in peak-time⁶). In particular, the current licence conditions stipulate:

“Not less than 280 hours in each calendar year of the Licensing Period of news programmes shall be included in the Channel 5 Service between 6 am and midnight and 120 hours in each calendar year in Peak Time Viewing Times. Such news programmes shall be of high quality and deal with both national and international matters. News programmes shall be provided in weekdays at intervals during the day – at least one programme at lunchtimes,

⁵ [C5 licence change request letter](#)

⁶ “Peak Viewing Time” is defined in Condition 1 of the Channel 5 licence as “6pm until 10.30pm each day or such other times as may be determined by Ofcom”.

one in the early evening, one in the midevening and headlines at other times. One programme shall be provided in the early evening on Saturdays and Sundays.”⁷

- 2.13 Currently, Channel 5 broadcasts approximately 160 hours of peak-time news per year. This exceeds the requirement of 120 hours by some margin. As part of this assessment we will consider whether the balance between peak and off-peak news on Channel 5 would still be appropriate if the proposed reduction to the peak-time requirement were to be accepted by Ofcom.

Channel 5’s proposed change to the licence conditions

- 2.14 Channel 5 has proposed the following changes to the news obligation (highlighted in bold):
- “Not less than 280 hours in each calendar year of the Licensing Period of news programmes shall be included in the Channel 5 Service between 6 am and midnight and **12020** hours in each calendar year in Peak Time Viewing Times. Such news programmes shall be of high quality and deal with both national and international matters. News programmes shall be provided in weekdays at intervals during the day – at least one programme at lunchtimes, one in the early evening, ~~one in the midevening and with~~ headlines **during Peak Time and at other times-Viewing Times**. One programme shall be provided in the early evening on Saturdays and Sundays”.*
- 2.15 Under Channel 5’s proposed changes to the licence conditions, if all other bulletins remain within its current schedule, Channel 5 will broadcast at least 20 hours of peak-time news per year. This represents less than a quarter of the hours currently stipulated in the current licence conditions, however the total amount of news that Channel 5 broadcasts per year will stay the same.

Channel 5’s justification for the proposed change

- 2.16 As part of its submission, Channel 5 set out its reasoning to support the proposed change. These reasons included its view that:⁸
- i) the 5pm bulletin attracts ‘harder to reach’ audiences such as women in DE socio-economic groups;⁹
 - ii) the licence conditions as currently drafted are too prescriptive and do not allow Channel 5 to deliver maximum benefit to viewers;
 - iii) the 18:30 bulletin is not additive to PSB news at that time as it is largely a repeat of 17:00 bulletin;
 - iv) the 18:30 bulletin is on at the same time as the ITV evening news and BBC regional news which have significantly higher viewership (Channel 5 has told us that it

⁷ [Channel 5 Licence](#), Annex: The Channel 5 Service, Part 1: Requirements for the provision and content of the Channel 5 Service, page 48.

⁸ [C5 licence change request letter](#)

⁹ The DE socio-economic groups defined by NRS, which include semi-skilled and unskilled manual workers; state pensioners, casual and lowest grade workers, unemployed with state benefits only.

currently has 0.72% market share compared with 30% BBC and 21% ITV at that time);

- v) an expanded 17:00 bulletin would add breadth and depth to coverage; and
- vi) the change would benefit overall PSB news delivery.

Legal framework

- 2.17 In assessing the licence variation proposed by Channel 5 and reaching the provisional view set out in this consultation document, we have taken account of all of our relevant statutory duties and the regulatory framework for news provision by Channel 5, which are summarised in Annex 1.

Impact assessment

- 2.18 Ofcom has a legal duty to carry out impact assessments where our policy decisions are likely to have a significant effect on businesses or the public, or where there is a major change in Ofcom's activities.¹⁰ The analysis set out in this document constitutes such an impact assessment for the purposes of the relevant duties imposed on Ofcom.

Equality impact assessment

- 2.19 Section 149 of the Equality Act 2010 (the "**2010 Act**") imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- 2.20 Section 75 of the Northern Ireland Act 1998 (the "**1998 Act**") also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.
- 2.21 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.

¹⁰ Section 7 of the Communications Act 2003.

2.22 We do not consider that our proposals have equality implications under the 2010 Act or the 1998 Act. Based on current viewing data, there could be a positive impact for older viewers as more people in this group watch Channel 5's 17:00 bulletin (67% of the 17:00 bulletin are aged 55+ compared to 51% of the later bulletin).¹¹

Consultation

2.23 Although there is no statutory requirement to have a public consultation on the licence variation requested by Channel 5,¹² we are allowing stakeholders an opportunity to provide comments in this specific case because we note that around 122,000 viewers of the Channel 5 news at 18:30 would lose access to that bulletin as a result of the proposed changes (see paragraph 3.12). We also note that other broadcasters, particularly the public service broadcasters, might be interested in the approach that we are minded take in this case.

Structure of this consultation and next steps

2.24 The remainder of this document is organised as follows:

- Section 3 sets out our analysis of the request and proposals;
- Annex 1 sets out the legal framework;
- Annex 2 describes how stakeholders can respond to this consultation;
- Annex 3 sets out Ofcom's consultation principles; and
- Annex 4 is a cover sheet for respondents to complete to accompany any submission in response to this consultation.

¹¹ BARB. Base: all individuals (4+), 7 day consolidated.

¹² See paragraph A2.13.

3. Our analysis and proposals

Introduction

3.1 This section sets out our analysis of the licence change request from Channel 5 and our proposed response.

Our analysis

3.2 In order to assess whether Channel 5’s request is appropriate, we need to consider whether the changes proposed would still meet the conditions set out in s.279 of the 2003 Act. In particular, we need to consider whether the revised time allocated to news programmes:

- a) would still be an appropriate proportion of time (s.279(2));
- b) would still split in an appropriate manner between “peak viewing times” and other times (s.279(3)); and
- c) would still ensure that news programmes are broadcast for viewing at intervals throughout the period for which the channel is provided (s.279(1)(c)).

3.3 We assess the justifications made by Channel 5 for the changes and set out further considerations we think are relevant to our assessment of the request in this document. We note that this consultation relates to one specific element of the Channel 5 licence and that we will assess more fully audience behaviours and impacts as part of the licence renewal process, as set out above at paragraph 2.8.

Is the time afforded to news provision by Channel 5 still appropriate?

3.4 Channel 5 has not proposed a reduction in overall total of time for news provision on its service. Channel 5 is seeking to reduce the obligation to broadcast news within ‘peak time’ (that is, from 120 hours to 20 hours), but will retain its commitment to broadcasting a minimum of 280 hours of news programming per year. We do not expect the total number of broadcast hours dedicated to news provision to decline as a result of this change. Therefore, we consider the time afforded would remain appropriate.

Figure 1 – current and proposed schedule of news on Channel 5

	Current schedule	Proposed schedule
Off-peak	17:00 – 17:30	17:00 – 18:00
Peak	18:30 – 19:00	-
Peak	19:55 – 20:00	19:55 – 20:00
Peak	20:58 – 21:00	20:58 – 21:00

Is the split between peak and off-peak news provision as proposed by Channel 5 appropriate?

- 3.5 'Peak times' are generally when more people are watching TV, so peak time requirements help ensure that public service content (such as news programming) is targeted at the maximum number of viewers.¹³ The request from Channel 5 does not seek to change the definition of "peak viewing time" in its licence; rather, it instead seeks a reduction in the peak time news requirement from 120 hours to 20 hours. Our assessment is therefore focused on whether the split of news on Channel 5 across peak and non-peak would remain appropriate following this change.
- 3.6 In reaching our provisional view, we have considered how this proposed change may affect audiences, what other PSB news services are available during the early evening, and how the change might impact on Channel 5's ability to fulfil its public service remit.
- 3.7 For the reasons set out below, we provisionally consider that the split between peak and off-peak news provision as proposed by Channel 5 would remain appropriate.

Removal of the 'mid-evening news bulletin' requirement

- 3.8 The first part of Channel 5's request would remove the requirement to broadcast a mid-evening programme (this requirement is currently met by the 18:30 news bulletin). This is because it will be broadcasting an hour-long news programme from 17:00 instead.
- 3.9 Channel 5 has reasoned that the 18:30 Channel 5 News bulletin is not additive to PSB news at that time because it works as a narrative repeat of the 17:00 bulletin. It also states that it has a limited potential audience as it is broadcast at the same time as the ITV evening news and the BBC regional news, both of which attract audiences of over three million viewers. Channel 5 adds that the current viewer share for the 18:30 Channel 5 news programme is 0.72% compared to 30% on the BBC and 21% for ITV at that time.¹⁴
- 3.10 We are minded to agree that other PSB news programmes available during peak time provide appropriate alternatives to the 18:30 Channel 5 news programme. These include BBC News at 6 (that averages nearly 6 million viewers), the ITV Evening News (that averages just under 4 million viewers) and Channel 4 news (which averages almost 1 million viewers) – see figure 2 below.
- 3.11 We also note that rolling news services such as the BBC News channel which broadcasts throughout the day (with average audience numbers of 200,000 – 300,000 per hour from

¹³ In our [2013 Consultation](#), we considered whether it would be appropriate to amend the definition of peak time as was requested by STV and UTV. The broadcasters requested the peak time definition change from 18:00 – 22:30 to 18:00 – 23:00 in order to allow them to meet the regional peak time obligations. At the time we decided the change was not appropriate as we considered the definition was broadly reflective of viewing patterns and we did not see strong arguments for moving away from a consistent approach to defining peak time across all public service broadcasters: [2013 Statement](#), page 21, paragraph 5.8.

¹⁴ [C5 licence change request letter](#)

17:00 – 20:00) also compliment the range of news services available to audiences in peak times.

Figure 2 - News provision across PSBs from 17:00 – 22:30¹⁵

Current schedule				Proposed schedule		
Time	News programme	Average audience ¹⁶	Channel	Time	News programme	Channel
17:00	5 News at 5	0.3m	Channel 5	17:00	5 News at 5	Channel 5
17:30	-		-	17:30		
18:00	BBC News at 6 / ITV News London	5.2m / 0.5m	BBC 1 / Channel 3	18:00	BBC News at 6 / ITV News London	BBC 1 / Channel 3
18:30	BBC London / ITV Evening News / 5 News Tonight	0.7m / 3.6m / 0.1m	BBC 1 / Channel 3 / Channel 5	18:30	BBC London / ITV Evening News	BBC 1 / Channel 3
19:00	Channel 4 News	0.7m	Channel 4	19:00	Channel 4 News	Channel 4
19:30						
19:55	5 News	0.5m	Channel 5	19:55	5 News	Channel 5
20:58	5 News	0.9m	Channel 5	20:58	5 News	Channel 5
22:00	BBC News at 10 / ITV News at 10	3.8m / 2m	BBC 1 / Channel 3	22:00	BBC News at 10 / ITV News at 10	BBC 1 / Channel 3
22:30	BBC London / ITV News London	0.7m / 0.2m	BBC 1 / Channel 3	22:30	BBC News at 10 / ITV News at 10	BBC 1 / Channel 3

3.12 Given that the viewing figures of Channel 5’s 18:30 news broadcast are lower than those for the 17:00 broadcast, we consider that there could be greater benefit to more viewers by extending the 17:00 broadcast and providing a longer, more in-depth programme. Industry viewing measurement from BARB shows that 122,000 viewers tuned into the 18:30 Channel 5 news bulletin on average between January and April of this year – far fewer than the 324,000 average viewers of the 17:00 broadcast during the same period.¹⁷

¹⁵ BARB Jan - April 2020. 7-day consolidated. Channels include +1s where appropriate. BBC London and ITV News London are based on the viewing to just the London regional news, across the UK.

¹⁶ BARB. January – April 2021 average audience individuals (4+), 7-day consolidated, includes +1 channels.

¹⁷ BARB 7 day consolidated. Includes +1 channels where appropriate.

Channel 5 News audience

- 3.13 We think the demographic range of Channel 5 audiences are also relevant to our consideration. Channel 5 News skews younger than both ITV's and BBC One's early evening news programmes. Its 17:00 bulletin has a higher proportion from the DE socioeconomic groups compared to all the other early evening news programmes (44% were DE compared to 38% of ITV's regional news programme which is the next highest). The 17:00 bulletin also has a heavier proportion of women (63%) than the other early evening news programmes (the later Channel 5 bulletin is next highest 61% and then the next highest is ITV Evening News with 57%).¹⁸
- 3.14 We think these general trends strengthen the arguments for accepting this proposed change. It is our provisional view that the in-depth hour-long 5pm news bulletin, enabled by the proposed licence variation will enrich the news available to a wider range of UK audiences.
- 3.15 Further, we are of the provisional view that the proposed change may improve the range and choice of PSB news programmes available to audiences, give the earlier broadcast time and extending to one-hour format programme. We see value and general benefit to viewers in there being a choice of PSB news programmes at various times, as this is likely to appeal to a broader range of audiences. The proposed change is likely to benefit overall PSB news delivery.

Will the change mean that news programmes are broadcast for viewing at appropriate intervals throughout the period for which the channel is provided?

- 3.16 As set out above, Channel 5 is currently required to include in each calendar year at least 120 hours of news programming in peak viewing time. Channel 5 has proposed that this minimum threshold of 120 hours is reduced to 20 hours so that it can broadcast an hour-long news programme at 17:00, which falls outside the peak time window, instead of the 30 minute 18:30 bulletin which it describes as a narrative repeat of the current 17:00 bulletin.
- 3.17 Peak viewing time is currently defined in the Channel 5 licence as 18:00 until 22:30 each day or such other times as determined by Ofcom¹⁹. Under Channel 5's proposals, there would be just headline news broadcast at 19:55 and 20:55 within the four-and-a-half-hour peak viewing time slot.
- 3.18 We consider that the peak time requirement must remain in the licence conditions to guarantee that there will be some news broadcast on Channel 5 between 18:00 and 22:30 each day. There are viewers that value short headline updates during the evening who may

¹⁸ BARB January – April 2021, includes +1 channels, profile base all individuals (4+).

¹⁹ Ofcom has a power under s. 279 of the 2003 Act to determine what constitutes "peak viewing time" for a channel, in consultation with the provider of the channel.

not wish to watch a longer form news programme of thirty or sixty minutes so under Channel 5's proposals, they would still be served.

- 3.19 For the reasons we have set out above, we consider that the alternative news sources available throughout peak viewing time, the hour-long 17:00 news programme which will provide more in-depth news than the current offerings and the fact that Channel 5 would maintain peak time bulletins which are generally broadcast at 19:55 and 20:55 means that reducing the peak time obligation for Channel 5 from 120 to 20 hours would still ensure that Channel 5's news bulletins are broadcast at appropriate times and strike an appropriate balance between peak and non-peak news provision on Channel 5.

An expanded 17:00 bulletin would add breadth and depth to coverage

- 3.20 Channel 5 considers that an hour-long 17:00 bulletin would allow it to provide more in-depth reports creating "space for more investigative, regional and social affairs news reporting".
- 3.21 We see that the possible benefits of a longer, more in-depth news programme might result in greater trust and understanding gleaned from Channel 5 news, as it would have the opportunity to better unpack issues to audiences and/or the ability to cover a broader range of stories. In our most recent News Consumption Survey, we asked regular 'news' viewers on different channels a series of attitude statements. Among regular Channel 5 news viewers, 60% felt their news was highly trustworthy, which was significantly lower than scores on trustworthiness given to other PSBs and Sky News Channel among their regular news viewers. Channel 5 news also achieved lower scores for 'high quality' and having a 'depth of analysis and content not available elsewhere' among their regular news viewers than BBC, Channel 4 and Sky News Channel. We consider this change might serve to boost Channel 5's performance against these measures for the reasons set out above, though acknowledging that the changes might also have other unintended or negligible impacts.²⁰
- 3.22 We note that a possible adverse impact could be those looking for a shorter news update at 17:00 now switch off because the hour-long bulletin may be less appealing. Although, we note that the one-hour news programme on Channel 4 news maintains a broadly stable average audience over the hour, so this risk may not be material.²¹
- 3.23 Channel 5 sets out that its proposed news schedule, with a one-hour bulletin at 17:00, would mean there is no gap in PSB news provision during the early and mid-evening from 17:00 until 20:00 when Channel 4's main evening news bulletin ends. It suggests that this will benefit viewers, in particular those who as a result of the pandemic might now work from home and therefore benefit from an earlier main news edition as they no longer have to commute home from offices.

²⁰ Source: Ofcom News Consumption Survey 2021 – Online sample only.

²¹ BARB: Channel 4 19:00 news programme average audience split by half hours.

- 3.24 It is difficult to predict how long-lasting the impact of the pandemic and increased home working may be, however, it is not unreasonable to suggest there could be general benefit to audiences in having a choice of PSB news across the late afternoon and early evening. We also note that currently, there are larger audiences for the 17:00 programme compared to the 18:30, which would suggest there is demand for Channel 5 news in the late afternoon and so a longer programme may further complement current provision by other PSBs and strengthen the total PSB news offer available to audiences.
- 3.25 In summary, we think that broadcasting an hour-long programme at 17:00 will allow Channel 5 News to examine and unpack stories in greater detail, which would be of general benefit to audiences. It could also help Channel 5 deliver on its public service remit in relation to the provision of a range of high quality and diverse programming, and to appeal to as wide an audience as possible. As part of our ongoing responsibilities, we will continue to keep news provision and consumption across PSBs under review.

Our proposals

- 3.26 For the reasons set out above, we are minded to approve Channel 5's request for a licence variation in line with the wording proposed by Channel 5 in its request, set out at paragraph 2.14 (with a few minor changes to ensure consistency with the definition of "Peak Viewing Times" set out in the Channel 5 licence). The amendments that we are minded to make are as follows:

"Not less than 280 hours in each calendar year of the Licensing Period of news programmes shall be included in the Channel 5 Service between 6 am and midnight and ~~120~~ hours in each calendar year in Peak Time Viewing Times. Such news programmes shall be of high quality and deal with both national and international matters. News programmes shall be provided in weekdays at intervals during the day – at least one programme at lunchtimes, one in the early evening, ~~one in the midevening and with headlines during Peak Viewing Times and at other times~~ . One programme shall be provided in the early evening on Saturdays and Sundays".

Consultation questions

- 3.27 We are seeking views, where possible supported by evidence, from stakeholders on the issues we have discussed in this document, in particular whether the revised time allocated to news programmes:
- would still constitute an appropriate proportion of time;
 - would still split in an appropriate manner between "peak viewing times" and other times; and
 - would still ensure that news programmes are broadcast for viewing at intervals throughout the period for which the channel is provided.
- 3.28 Any further relevant considerations not set out in this consultation are also welcome and we will consider alongside the responses to the questions above.

Next steps

3.29 We will consult on our proposals for a period of four weeks. It is our intention to publish a statement setting out our final decision in relation to the request in September 2021.

The overview section in this document is a simplified high-level summary only. The issues we are consulting on and our reasoning are set out in the full document.

A1. Legal framework

A1.1 In reaching the provisional view set out in this consultation document, we have taken account of all of our relevant statutory duties and the regulatory framework for news provision by Channel 5, which are set out in this Annex.

The regulatory regime for Channel 5

- A1.2 Channel 5 Broadcasting Ltd holds a licence granted under the [Broadcasting Act 1990](#) (the ‘1990 Act’) for the provision of the Channel 5 service (the ‘Channel 5 licence’)²², which is one of the television services contributing to the public service broadcasting system.
- A1.3 Ofcom has the power to impose such licence conditions as we consider appropriate having regard to any duties that are or may be imposed on Ofcom or the licence holder under the 1990 Act, the Broadcasting Act 1996 or the 2003 Act²³.
- A1.4 In respect of Channel 5, these conditions include those that must be part of the ‘regulatory regime for the licensed service’ (i.e. Channel 5), as set out in the 2003 Act.²⁴ Specifically, they must include:
- a) a condition requiring the provider of Channel 5 to fulfil its public service remit, which is “the provision of a range of high quality and diverse programming”;²⁵ and
 - b) other specific conditions on the programming and productions to be included in the Channel 5 service, which are set out in the 2003 Act and relevantly extracted below.
- A1.5 These obligations are intended to secure that Channel 5 makes a sufficient contribution to the purposes of public service television broadcasting set out in s.264(4) of the 2003 Act.

The relevant conditions concerning news provision

- A1.6 The programme-specific conditions set out in the 2003 Act include obligations relating to news provision. In particular, the regulatory regime for Channel 5 must contain the conditions that Ofcom considers appropriate to secure that:
- a) an appropriate proportion of time is allocated to the broadcasting of news and current affairs programmes;²⁶
 - b) such programmes are of high quality and deal with both national and international matters;²⁷

²² The Channel 5 licence is available here: https://www.ofcom.org.uk/_data/assets/pdf_file/0020/40376/channel-5-attachment-variation.pdf

²³ S. 4(1) of the 1990 Act.

²⁴ S.214(7) and 263(1)-(2) of the 2003 Act.

²⁵ S.265(2) of the 2003 Act. This provision has been given effect through Condition 7 of the [Channel 5 licence](#) .

²⁶ S.279(2) of the 2003 Act.

²⁷ S.279(1)(b) of the 2003 Act.

- c) news programmes are broadcast at intervals throughout the day;²⁸ and
- d) **the times at which both news and current affairs programmes are broadcast include an appropriate split between peak viewing times and other times.**²⁹

A1.7 “Peak viewing time” is defined in the 2003 Act as such time as appears to Ofcom to be, actually or potentially, a peak viewing time for that channel.³⁰

A1.8 The relevant licence conditions in the [Channel 5 licence](#) are set out in Condition 13 and Paragraph 4 of the Annex (Part 1), which have been imposed by Ofcom under [s.279](#) of the 2003 Act. These conditions include the following requirements:

“Not less than 280 hours in each calendar year of the Licensing Period of news programmes shall be included in the Channel 5 Service between 6 am and midnight and 120 hours in each calendar year in Peak Viewing Times. Such news programmes shall be of high quality and deal with both national and international matters. News programmes shall be provided in weekdays at intervals during the day – at least one programme at lunchtimes, one in the early evening, one in the mid-evening and headlines at other times. One programme shall be provided in the early evening on Saturdays and Sundays.”

A1.9 “Peak Viewing Times” means “6pm until 10.30pm each day or such other times as may be determined by Ofcom”.³¹

A1.10 Therefore, under the current licence conditions, **Channel 5 must deliver 280 hours of national and international news per year, of which 120 must be broadcast between 6pm and 10.30pm** (i.e. during peak viewing times).

The licence variation process

A1.11 Channel 5 Broadcasting Ltd has asked us to vary the licence conditions above to **reduce its peak time obligation** and to **remove the requirement to include at least one news programme in the mid-evening**.

A1.12 In assessing the request, we need to consider whether, in light of Ofcom’s general duties set out below, the time to be allocated to the broadcasting of news programmes as a result of the proposed change:

- a) would still be an appropriate proportion of time (s.279(2));
- b) would still ensure that news programmes are broadcast for viewing at intervals throughout the period for which the channel is provided (s.279(1)(c)); and
- c) would still be split in an appropriate manner between peak viewing times and other times (s.279(3)).

²⁸ S.279(1)(c) of the 2003 Act.

²⁹ S.279(3) of the 2003 Act.

³⁰ S.279(5) of the 2003 Act.

³¹ See definition set out in Condition 1 (“Definitions and Interpretation”) of the [Channel 5 licence](#).

- A1.13 The 1990 Act (s.3(4)) gives Ofcom the power to vary a broadcasting licence by a notice served on the licence holder, if the licence holder has been given a reasonable opportunity of making representations to Ofcom about the variation. This consultation requirement is also a precondition for determining the proportion of time to be allocated to the broadcasting of news programmes or current affairs programmes or what constitutes a peak viewing time for a channel.³²
- A1.14 The 1990 Act (s.3(5)) requires the consent of the licence holder only if the variation concerns the period for which the licence is to continue in force. Consent is not required in this case because the proposed variation does not concern the licence period. Although there is no statutory requirement to seek Channel 5's consent, we note that we are considering a variation which was specifically requested by Channel 5.

Ofcom's general duties

- A1.15 In conducting this licence variation process, Ofcom must have regard to its general duties set out in section 3 of the [Communications Act 2003](#) (the '2003 Act').
- A1.16 Ofcom's principal duty, set out in section 3(1) of the 2003 Act is to further the interests of:
- a) citizens in relation to communications matters; and
 - b) consumers in relevant markets, where appropriate by promoting competition³³.
- A1.17 In performing these principal duties, Ofcom must have regard to the following factors:
- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (section 3(3)(a)); and
 - b) any other principles appearing to us to represent the best regulatory practice (section 3(3)(b)).
- A1.18 Ofcom also has a number of general duties under section 3(2) of the 2003 Act. For example, Ofcom is required to secure certain things in carrying out our statutory functions, including the availability throughout the United Kingdom of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests (section 3(2)(c)), and the maintenance of a sufficient plurality of providers of different television and radio services (section 3(2)(d)).
- A1.19 In carrying out these duties, we must also have regard to certain matters listed in section 3(4) of the 2003 Act, as appear to us to be relevant in the circumstances. These matters include, in particular:
- a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK (section 3(4)(a));

³² S.279(6)-(7) of the 2003 Act.

³³ In performing our duty to further the interests of consumers, we are also required to have regard in particular to the interests of those consumers in respect of choice, price, quality of service and value for money (section 3(5)).

- b) the desirability of encouraging investment and innovation in relevant markets (section 3(4)(d));
- c) the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas (section 3(4)(l)); and
- d) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in sections 3(1) and (2) of the 2003 Act (as outlined above) is reasonably practicable (section 3(4)(m)).

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 30 July 2021.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/consultation-licence-change-request-for-news-output-on-channel-5>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to Channel5licencechange@ofcom.org.uk as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only, and will not be valid after the end of 2021.
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Channel 5 licence condition change consultation
Content policy team
Broadcasting and Online Content Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at paragraph 3.23 of this document. It

would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A2.10 If you want to discuss the issues and questions raised in this consultation, please email Channel5licencechange@ofcom.org.uk

Confidentiality

- A2.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A2.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A2.15 Following this consultation period, Ofcom plans to publish a statement in September 2021.
- A2.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A4. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)