



# Statement on short term regulatory decisions

Ofcom's Second Public Service Broadcasting Review

Statement

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## Section 1

# Executive summary

- 1.1 Phase one of Ofcom's public service broadcasting review identified that the level of obligations on commercial public service broadcasters was unsustainable. In Phase two of the review, we consulted on a number of proposed changes to the regulatory obligations on Channels 3, 4, Five and Teletext. These proposals were designed to deliver a viable and sustainable level of public service content in the transition period from now until the current public service broadcasting model is altered. The specific changes were put forward in light of the declining value of public service status for commercial broadcasters, and the opportunity cost of their regulatory obligations.
- 1.2 We recognised a need to balance the value of licence benefits with the cost of public service broadcasting obligations. Without this balance, there is no incentive for commercial public service broadcasters to retain their public service licences. This is particularly the case for ITV plc. The licences it holds retain significant public service obligations, including the regional obligations rooted in Channel 3's original federal structure. If the obligations of ITV plc's licences significantly outweighed their benefits, ITV plc could feasibly surrender its public service licences and pursue an entirely commercial strategy using broadcasting spectrum through an alternative multiplex (such as SDN, which it owns). In such a scenario, much of ITV plc's public service content would be likely to be lost completely, including regional programmes.
- 1.3 In formulating proposals based on this underlying analysis, we listened to what ITV network audiences told us they valued most – namely regional news gathering and programmes transmitted at times when most people were watching. Accordingly, we concentrated the declining available benefits of public service status on maintaining journalistic resources in the field, maximising the level of 'localness' in programmes and maintaining the volume of public service programmes broadcast in peak-time, when most people watch.
- 1.4 In reaching the decisions (summarised below), we have carefully considered and taken into account all the consultation responses which are summarised in the annex to this statement and published in full (where non-confidential) on Ofcom's website at [http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/statement](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement). We have reviewed each of our original proposals in light of them and considered whether there were viable alternatives, particularly bearing in mind the declining value of the public service broadcasting licences as outlined above.
- 1.5 These decisions do not represent a permanent solution to the mounting pressures on commercial public service broadcasters' ability to contribute to the overall public service broadcasting system. Ofcom's advice to government and Parliament about how these longer term issues should be tackled is set out in the final statement of Ofcom's second public service broadcasting review "Putting Viewers First" which has been published alongside this document<sup>1</sup>.
- 1.6 We plan to implement changes to the volume of Channel 3 programmes in the devolved nations and English regions as originally put forward, except in relation to the quota for programming other than news in Northern Ireland. Here, the original proposal for a minimum of one and a half hours per week has been revised upwards to a minimum of two hours per week. This change is in response to strong

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<sup>1</sup> [http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/statement](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement)

stakeholder reaction against the original proposals; and because of the specific conditions pertaining to Northern Ireland which differ from the other nations – including later digital switch-over.

- 1.7 The quota for programming other than news in Wales and Scotland will be revised to one and a half hours per week, as per the proposals. Within the quotas in all the devolved nations, as now, 45 minutes must be in peak and 30 minutes in near peak, reflecting the continuing need to maintain public service output at the most suitable times for audiences. The requirements for current affairs are also retained. The changes will be implemented with effect across the calendar year 2009 and thereafter.
- 1.8 The requirement for news programmes on stv, UTV and ITV Wales will reduce to 4 hours per week.
- 1.9 As with programming other than news, our proposals in relation to the broader pattern of regional ITV news bulletins were aimed at maximising those elements which audiences told us they valued most – i.e. local news gathering and programmes transmitted at times when most people were watching. Thus we are retaining content in the main peak-time regional programme, and a full bulletin after *News at Ten*, separately for every existing region and almost every existing sub-region. The proposals we published in phase two represented a substantial improvement to ITV plc's original plans in relation to regional news, and were put forward only after pre-consultation with the company. The circumstances of each nation, region and sub-region were considered carefully in formulating our proposals, as set out in Section 7 and Annex 1 of the Phase two document<sup>2</sup>.
- 1.10 The consultation specifically invited respondents to let us know of any alternative means to achieve our desired objectives. 33 consultation responses were received from a range of public bodies and individuals, in relation to regional news. Almost all were opposed to the changes, although some were reluctantly accepting of the reasons for change. We have considered the responses carefully, and particularly appreciate the strong attachment felt by audiences both to news for regions (such as Border and Westcountry, for example), and to programming other than news in the devolved nations.
- 1.11 Generally, however, the comments from stakeholders expressed regret about any diminution of the current output, without putting forward alternatives that would be viable in the economic circumstances. One respondent suggested the regional news could be sponsored. This is not possible under current legislation. Our underlying economic analysis - that the costs involved in holding a public service broadcasting licence will soon outweigh the benefits - was not challenged by respondents.
- 1.12 The pattern of delivery of Channel 3 regional news in England and Southern Scotland, with effect from within the first quarter of 2009, will therefore be:
- Border and Tyne Tees areas will be served by a single regional main weekday news bulletin, containing variations of 15 minutes for each of the Border and Tyne Tees areas, and by a separate 9 minute bulletin after *News at Ten*
  - West and Westcountry areas will be served by a single regional main weekday news bulletin, containing variations of 15 minutes for each of the West and Westcountry areas, and by a separate 9 minute bulletin after *News at Ten*

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<sup>2</sup> [http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf)

- Thames Valley and Meridian areas will be served by a single regional main weekday news bulletin, containing variations of 15 minutes for each of two separate sub-regions comprising the former Thames Valley and Meridian South areas and the Meridian South East area, and by a separate 9 minute bulletin after News at Ten
  - Anglia region will be served by a single regional main weekday news bulletin, containing variations of 6 minutes for each of the Anglia East and West areas and a separate 9 minute bulletin for each sub-region after News at Ten
  - Central region will be served by a single regional main weekday news bulletin, containing variations of 6 minutes for each of the Central East and West areas and a separate 9 minute bulletin for each sub-region after News at Ten
  - Yorkshire region will be served by a single regional main weekday news bulletin, containing variations of 6 minutes for each of the Yorkshire East and West areas and a separate 9 minute bulletin for each sub-region after News at Ten
  - There will be no change to the regional pattern in the Granada or London regions or in ITV Wales.
- 1.13 Proposed changes to the *volume* of Channel 3 regional news slots, to the volume of regional content other than news in England, and to the combined level of news and content other than news in the Channel Islands received little comment from stakeholders, adverse or otherwise. The volume of news in the English regions and Border will reduce to 3 hours 45 minutes per week. Content other than news in England and Southern Scotland will fall to 15 minutes per week, which can be provided within the news slots, bringing the combined total to 4 hours per week. In the Channel Islands the minimum volume of news and content other than news will be 4 hours per week. Ofcom intends to effect these changes within the first quarter of 2009.
- 1.14 We will set the ITV network current affairs quota at 50 minutes on average per week with effect from 2010. However, 40 minutes of this must be delivered in peak-time, as now.
- 1.15 The ITV network quotas for expenditure on and volume of production from outside London will be set at 35% from the calendar year 2009 on.
- 1.16 The quota for out-of London production on Channel 4 will be set at 35% from 2010, within which a quota of 3% will be set for production from Scotland, Wales and Northern Ireland combined. We plan to review - and consider increasing - these quotas once the future of Channel 4 is clearer, in response to the issues set out in our statement on the longer-term options.
- 1.17 We will set the originations quota for Channel Five at 50%, with a 40% figure in peak-time, with effect across the calendar year 2009 and thereafter.
- 1.18 We will allow Teletext to reduce the number of regional news regions from 19 to 13; reduce the minimum regional page count for content other than news on the analogue service by 40% to 24 pages (the same as the digital service); and to reduce national news page count by a third, from 30 to 20 pages, with effect within the first quarter of 2009.

## Section 2

# Ofcom decisions

- 2.1 Phase one of Ofcom's public service broadcasting review identified that the level of obligations on commercial public service broadcasters was unsustainable, given the declining value of public service status and the opportunity cost of their regulatory obligations. Our findings on this were set out in section 5 of the Phase one consultation document which can be found at [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf).
- 2.2 As a result, Phase two of Ofcom's second public service broadcasting review proposed short term changes in licence obligations in relation to each of the licensed public service broadcasters (except GMTV). The proposed changes in general (with an important exception for Channel 4) reflected the need to adjust obligations placed on the licensees in order to make them sustainable until new models for public service broadcasting are put in place.
- 2.3 It was important in this regard to ensure the cost of public service obligations remained in balance with the benefits available to the licensees. The value of these benefits is declining. Ofcom judges it necessary to maintain such a balance, in order to ensure it remains in licensees' interests to retain their public service broadcasting licences, and that they are adequately funded to deliver these obligations. We believe this is important, at least in the short-term, ahead of possible legislative and structural changes, which are reflected in the longer-term proposals and recommendations outlined in the document<sup>3</sup> being published simultaneously with this statement. If a broadcaster such as ITV plc were to relinquish its licences, many of its contributions to public service broadcasting, such as regional news, would be likely to be lost straight away.
- 2.4 The legal framework setting out Ofcom's general powers and duties in this area are contained in Section 3 of the Communications Act 2003. Ofcom's duties and powers to establish quotas for the delivery of public service content in key public service areas are detailed in sections 278, 279, 284, 286, 287, 288 and 289. The relevant sections are reproduced at Annex 2 below.
- 2.5 Ofcom entirely appreciates the strong support for the highly important aspects of public service broadcasting involved here, most notably in the nations and regions. The consultation responses we received concentrated mainly on proposals to restructure ITV plc's regional news output, and to allow Channel 3 licensees in the UK devolved nations to reduce the volume of programming other than news. Many emphasised the value of both regional news and programming other than news. The other issue which attracted most comment was the proposal to change the quotas for out-of-London production – particularly as they affected Scotland, Wales and Northern Ireland. Further detail of the consultation responses is contained in the attached summary at Annex 1.
- 2.6 None of the consultation responses challenged our underlying analysis of the costs and benefits of holding the public service broadcasting licences. At heart therefore, there remained the need to match the value of licence benefits with the cost of public service broadcasting obligations, for the reasons explained above.

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<sup>3</sup> [http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/statement](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement)

- 2.7 We specifically invited respondents to let us know of any different approaches which might be taken to the short term issues, so that these could be considered by us before final decisions were reached in these important areas. However, there were very few alternative approaches suggested and none of these represented viable approaches that would be feasible in the short-term (see paragraph 2.21 below). Some respondents suggested news in the Scotland part of Border region should be provided by stv. However, Ofcom has no power to direct the Border licensee to take news in that part of its region from another licensee.
- 2.8 Our aim in formulating the proposals we originally put forward was to concentrate the declining available funding on maintaining both journalistic resources on the ground, which we know is a priority for audiences, and the geographical specificity and volume of the news and programming other than news that are broadcast when most people watch: in peak-time. Having reviewed each of these proposals and their original rationale - in light of all the responses, and taking into account the lack of viable alternatives; and the lack of any challenge to our costs and benefits analysis - we have decided to implement the following changes (summarised below):

Issue	Licensee/ channel	Summary of Ofcom's proposal
1. Volume of regions and nations news slots	All Channel 3 regions	Allow reduction in volume from 5h 20m to 4h per week <sup>4</sup> reflecting loss of mid-morning and weekend daytime bulletins; 3h 45m <sup>5</sup> in English regions. Peak-time (1800-2230) requirement would remain as now.
2. Volume of programming other than news for Wales	ITV plc	Reduce quota from 4h per week in 2008 to 90 min per week, maintaining as now 45 minutes in peak, 30 min in near-peak (1700-1800, 2230-2330). Current affairs within this to remain at present level of 47min per week.
3. Volume of programming other than news in Scotland	stv	Reduce quota from 4h per week in 2008 to minimum of 90 min per week (as with ITV Wales, peak, near-peak and current affairs elements within this to remain at present levels)
4. Volume of programming other than news in Northern Ireland	UTV	Reduce quota from 4h per week in 2008 to minimum of 2h per week (as with ITV Wales and stv, peak, near-peak and current affairs elements within this to remain at present levels)
5. Pattern of regional news programmes in	ITV plc	Merger of news services in: Border and Tyne Tees; West and Westcountry; Thames Valley and Meridian <sup>6</sup> . This except for leading stories of 15 mins duration in 6pm weekday programme, and full

<sup>4</sup> Normal weeks, excluding those with bank holidays

<sup>5</sup> As above

<sup>6</sup> Split in Meridian region would comprise one sub-region covering former Thames Valley and Meridian South areas, second covering Meridian South-East area.

some regions		9 min bulletin after <i>News at Ten</i> . These would remain separate for each region. Separate sub-regional output in Central East/West; Anglia East/West; and Yorkshire East/West would reduce to 6 mins within 6pm programme and full bulletin after <i>News at Ten</i> .
6. Volume of content other than news for English regions	ITV plc	Reduce quota from 30 min per week previously agreed for 2009 to 15 min, all in peak and near-peak. This may be accommodated in news slots.
7. Volume of combined news and other content	Channel TV	Reduce quota from 5h 38m to 4h per week
8. Volume of network current affairs	All Channel 3 regions	Reduce from 90 min per week to 50 min from 2010 (40 min in peak, as now)
9. Out-of-London network production quota	All Channel 3 regions	Reduce spend and volume quotas from 50% to 35%
10. Out-of-London production quota	Channel 4	Increase spend and volume quotas from 30% to 35%, of which a minimum 3% from outside England from 2010. Review both quotas when future of Channel 4 is clearer..
11. Original production quota	Five	Reduce quota for original productions from 53% to 50% (and 42% to 40% in peak)
12. Pages of news and content other than news	Teletext	Reduce number of regional news regions from 19 to 13, while increasing page count in each region by 40%; cut regional coverage of content other than news on analogue; reduce national news volume

- 2.9 Whilst respondents may be disappointed that maintenance of the precise status quo is not possible, given the economic analysis, Ofcom has tried throughout to ensure the most important aspects of the services are maintained in the coming period. We have also, in our statement on longer-term options, proposed new strategies to secure delivery of public service broadcasting, particularly in the devolved nations and English regions, from 2011.
- 2.10 As our decisions do not constitute further major changes to our short-term proposals set out in the Phase 2 consultation, and we have received no comments on the attached Impact Assessment and Equality Impact Assessment, we have not updated these. In relation to equality impact provisions for Northern Ireland, the only change to our Phase two proposals is an increase in the minimum provision for viewers there as a whole.
- 2.11 Our decisions and the reasons for them are discussed further below.

## Volume of news in the devolved nations and English regions

- 2.12 Whilst there was opposition both to changes in the pattern of ITV news regions and to the volume of programming other than news in the nations, proposed changes to the *volume* of news slots received little comment from stakeholders in England or Scotland. However, the Northern Ireland Assembly passed a motion regretting changes to the quotas applied to UTV, including the proposed reduction in the volume of news. There was also opposition from the broadcasting sub-committee of the National Assembly for Wales.
- 2.13 We considered these views carefully. We were mindful that the proposed reduction in the volume of news involved the loss of the least watched bulletins - on weekday mornings and weekend daytime. In addition, it would be impractical to have a different pattern of short news bulletins in Northern Ireland and Wales from the rest of Channel 3. A consistent UK-wide pattern is essential if UTV and ITV Wales are to continue to broadcast the ITV network schedule.
- 2.14 We therefore decided to allow a reduction in volume from 5h 20m to 4h per week<sup>7</sup> in every Channel 3 region but the peak-time (1800-2230) requirement will remain as now. Ofcom intends to effect these changes within the first quarter of 2009.

## Programming other than news (including current affairs) for the devolved nations

- 2.15 As reflected in the summary of responses, there was concern at the proposals to reduce the volume of programming other than news, reflecting life and culture in Scotland, Wales and Northern Ireland. Nine such responses were received from Wales, with four each from Scotland and Northern Ireland. Ofcom understands these concerns and, as will be evident from the relevant sections of the final public service broadcasting statement, is actively engaged in developing new models that will address these needs in the longer term future.
- 2.16 We have considered carefully whether it would be possible to set the quotas at a higher level, and have examined the economic situation of each licensee in this light. In respect to Scotland and Wales, we have concluded that, in current circumstances, such changes to the proposals would not be sustainable. The ITV Wales licence is already in deficit, and the licences held by stv are approaching the same position. Factors applying in Northern Ireland (see below) do not apply in Scotland and Wales.
- 2.17 We feel that some respondents may not have appreciated fully that the main components of the services – the requirements for programmes in peak, near to peak, and for current affairs – will remain unchanged. It is programmes around the edges of the schedule, which are less well-watched and generally less well funded, that may be lost. We note, however, that stv has pledged, at least for the time being, to over-deliver, at their own commercial risk. To that extent, the quota should be regarded as a base-level and not a ceiling.
- 2.18 We have decided to revise our proposals in relation to programming other than news in Northern Ireland. This reflects acknowledgement of the strength of opinion in support of programming made in and for the Province, as reflected in consultation responses. It also reflects the stronger commercial position of UTV, compared to stv; and the later move to digital switch-over in Northern Ireland (2012 as opposed to 2009 for Wales and 2010 for most of Scotland). Although UTV had already stated its

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<sup>7</sup> Normal weeks, excluding those with bank holidays

intention to over-deliver on the proposed hour and a half quota, at its own commercial risk, it had nevertheless welcomed the lower figure. We will continue to review the viability of the two hour quota in the light of changing commercial conditions.

- 2.19 We will implement changes to the requirements for Channel 3 programming other than news in the devolved nations, with effect across the calendar year 2009 and thereafter.

### **ITV regional news obligations**

- 2.20 As noted in the summary of stakeholder responses included as Annex 1 to this statement, most of the responses covering the proposed changes in regulatory obligations addressed the regional news question, and of these 28 were opposed to one or more aspects of proposed change, three were 'accepting' of the changes, and only two were in favour.
- 2.21 However, there was little response to Ofcom's request for alternatives that would suit audience needs better, whilst still addressing the underlying funding problems (i.e. alternatives other than the status quo). One respondent suggested the existing pattern for regional and sub-regional news could be maintained if ITV plc's obligations were reduced to a single 30-minute peak-time bulletin. The same respondent proposed allowing regional news to be sponsored. Neither is possible under current legislation, which forbids sponsorship of news and requires regional output throughout the day.
- 2.22 Ofcom noted that, while written responses were received in some volume, attendances at widely publicised consultation events were very low: 26 in Dumfries; 18 in Hawick; 9 in Carlisle; and 3 in Plymouth. This may reflect reluctant acceptance of changes and the factors that lie behind them, including the economic situation, and the fact that there would be nothing to prevent ITV plc from withdrawing £40 million of funding from the regional news service, even if the present pattern of regional news delivery were retained in Ofcom licences. Also, as detailed in our Phase two report, the proposals adopted by Ofcom followed extensive dialogue with ITV plc, and represent a very substantial improvement on what ITV plc originally proposed. Those original proposals had for example resulted in 13,000 individually signed postcards being sent to Ofcom in support of Border TV's *Lookaround*.
- 2.23 Against a background of increasing economic pressures and the high overall costs of regional news provision, it was Ofcom's intention to maximise local news gathering and to ensure that output was concentrated at those times when most people wanted to watch i.e. in peak-time. This intention was informed by audience research. In the absence of alternative viable proposals from stakeholders, Ofcom now plans to implement licence changes in accordance with the proposals. These changes will take effect within the first quarter of 2009.
- 2.24 Particular issues that did arise, where alternative proposals might be viable, related to the Border region. The first of these concerned the Scottish part of the region. Some respondents felt that the area would be better served by a service originating in Scotland. Although Ofcom's deliberative research had also found some support for this notion, results from the quantitative audience research on this issue had been equivocal. A postcard campaign to save ITV's Border's *Lookaround* programme had also attracted support from both the English and Scottish sides of the border. In any case, no agreement had been reached between stv and ITV plc on stv supplying such a Scottish based service, and Ofcom has no power to enforce such an

outcome, even if it wished to do so. Some respondents noted that ITV had pledged to maintain an average of 6 minutes of specifically Scottish news within the main *Lookaround* programme, and asked that Ofcom make this a licence condition. Whilst Ofcom welcomes this commitment, there is no provision in the legislation which allows Ofcom to require a set amount of coverage of a particular geographical part of a region within an individual news programme.

- 2.25 The second issue concerned the Isle of Man, and the question of whether it would prefer to remain part of the Border region, when parts of the service are merged with Tyne Tees, or whether it would prefer to receive the Granada regional news service and become part of the Granada news region. Ofcom stated that it would welcome views from the island on this point. The Isle of Man Communications Commission conducted a consultation exercise, which received 120 responses, of which 77% favoured the Granada option and only 17% Border. This outcome also reflected the view of the island parliament. ITV plc is also agreeable to making the change, which will be made, but which for technical reasons will only be possible towards the end of 2009.
- 2.26 In light of all the consultation responses, and taking into account the lack of viable alternatives and the lack of any challenge to our costs and benefits analysis - we have decided to implement the changes to the pattern of ITV regional news obligations as set out in Phase two.

### **ITV regional content other than news in England and news and content other than news in the Channel Islands**

- 2.27 Proposed changes to the volume of regional news slots, to the volume of regional content other than news programmes in England, and to the combined level of news and content other than news programmes in the Channel Islands received little comment from stakeholders, adverse or otherwise. Ofcom also intends to effect these changes within the first quarter of 2009.

### **ITV network current affairs**

- 2.28 No response was received specifically on the proposed reduction in ITV network current affairs programmes, apart from ITV plc itself. Pointing to the likely further decline in advertising revenue, ITV plc argued that the quota should be set at less than half an hour per week, rather than the continued 90 minutes in 2009 and proposed 50 minutes per week from 2010 (of which 40 minutes must be in peak).
- 2.29 Ofcom notes that, in our analysis, the opportunity cost of current affairs programmes currently is £7m of which most relates to the peak time programmes, principally *Tonight*. Network current affairs remains an important priority for viewers and for public service content delivery. Ofcom notes that since the publication of our September consultation document, ITV plc and the BBC have made proposals for partnership and resource sharing which are aimed at reducing the cost of regional news for ITV and hence the overall cost of ITV plc's public service obligations. Given this, Ofcom has decided to maintain its original proposal despite ITV plc's arguments for further reduction in the current affairs quota.
- 2.30 We will reduce the current affairs quota to 50 minutes on average per week from 2010. 40 minutes of this must be delivered in peak-time, as now.

## **ITV network production from outside London**

- 2.31 ITV plc argued that its quota for network out-of-London production should be set at 10%, although it had previously argued the case for 35%. stv was disappointed at the proposed reduction. Few other responses were received on this issue, although five respondents commented adversely on the overall level of out of London production by public service broadcasters taken together. Taking account of the opportunity cost to ITV plc of out-of-London production, which in our analysis amounts to £5m per annum, and the need to keep costs and benefits of the licences in balance, we have decided to go ahead with the changes as proposed.
- 2.32 The ITV network quotas for expenditure on and volume of production from outside London will be set at 35% from the calendar year 2009 on.

## **Channel 4 production from outside London**

- 2.33 Some of those who responded about the overall level of out-of-London production felt that Channel 4 should have an objective to match the proposed BBC quota of 50% out-of-London production by 2016 (compared with the 35% proposed by Ofcom from 2010). Ofcom believes that would be a challenging objective for a broadcaster such as Channel 4, without production bases of its own – either in London or elsewhere – though this situation may change as the BBC increases the proportion of its much larger budget for independents which it spends outside London. We agree with respondents that the proposed quota of 3% production from the nations of Scotland, Wales and Northern Ireland represents a very small figure, when set against the 17% of UK population living in those nations. The 3% figure was originally put forward by the channel itself, and Ofcom accepts that further effective development of production ‘clusters’ around the nations of the UK may take a little time. We nevertheless believe that progress in commissioning both English independents outside London and independents in the devolved nations above these levels is a priority for Channel 4, as a publicly owned institution. However it is inappropriate to set higher levels at a point where the future direction of Channel 4 remains unclear (our analysis of which is set out in our statement on longer term issues) and while the BBC is developing the detail of its out-of-London plans.
- 2.34 The quota for out-of London production on Channel 4 will be set at 35% from 2010, within which a quota of 3% will be set for production from Scotland, Wales and Northern Ireland combined. We plan to review - and consider increasing - these quotas once the future of Channel 4 is clearer.

## **Channel Five and Teletext**

- 2.35 Finally, proposed changes relating to Channel Five and Teletext attracted little comment in consultation responses, save from the licensees themselves.
- 2.36 We have therefore decided to adopt the proposals set out in Phase two and set the originations quota for Channel Five at 50%, with a 40% figure in peak-time, with effect across the calendar year 2009 and thereafter.
- 2.37 We will allow Teletext to reduce the number of regional news regions from 19 to 13; reduce the minimum page count for regional content other than news on the analogue service by 40% to 24 pages (the same level as the digital service); and to reduce national news page count by a third, from 30 to 20 pages, with effect within the first quarter of 2009.

## Annex 1

# Summary of consultation responses: Tier 2 quotas

- A1.1 The public service broadcasting review Phase Two consultation outlined Ofcom's proposals for maintaining the delivery of public service content in the short term i.e. for the period before any new legislation is put in place. It was Ofcom's aim to maximise public service broadcasting delivery by trying to ensure the continuation of an appropriate contribution from the commercial public service broadcasting channels.
- A1.2 Consultation responses concentrated mainly on the Ofcom proposals to allow ITV plc to restructure the pattern of its regional news output, and to allow Channel 3 licensees in the UK nations to reduce the volume of programming other than news. Copies of all the non-confidential responses to the public service broadcasting review phase two consultation have been published on Ofcom's website at [http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/statement](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement). Most of those who chose to respond to these elements of the consultation document were opposed to the proposals.
- A1.3 As part of the consultation process, Ofcom also held a number of public meetings in areas most affected by the ITV regional news plans. Although these were sparsely attended, despite being widely publicised locally, the majority of attendees appeared to understand the economic rationale behind the proposals, and were reluctantly accepting.
- A1.4 The other issue which attracted negative comment was the proposal to change the quotas for out-of-London production – particularly as they affected Scotland, Wales and Northern Ireland.
- A1.5 The consultation document specifically invited respondents to suggest viable alternatives to the proposals. It was notable that, although most respondents expressed dissatisfaction at one or more aspects of the changes, none presented any viable alternative. Nor was Ofcom's analysis of the cost and benefit to commercial broadcasters of holding public service broadcasting licences challenged by stakeholders.

## ITV news programmes

- A1.6 The greatest level of concern was over ITV plc plans to merge the ITV Border and Tyne Tees news regions; and the ITV West and Southwest regional news areas. Of these responses, 28 were opposed to one or more aspects of the changes and only two were in favour. Few comments came from outside those areas, although there were isolated comments about Central News in the East Midlands and about Meridian programmes in Brighton.
- A1.7 Bodies on both sides of the England/Scotland border were opposed to the Border Tyne Tees merger. The Scottish government said the Border region, and its Scottish component in particular, was where local news and other content was most highly valued. It expects Ofcom to reflect this "unique level of public concern" and sought urgent clarification on ITV's commitment to Scottish news minutage in the

Borders. It questioned how robust such a commitment could be when it was not actually a licence requirement.

- A1.8 The Edinburgh Chamber of Commerce said it appreciated the severe financial pressures caused by tumbling advertising revenues for regional stations, but argued for Scottish content to be delivered from Scotland. The overall Scottish Chambers of Commerce body said the “nonsense” of Border TV delivering news for the Scottish Borders and for Dumfries and Galloway from Carlisle was being replaced by the “bigger nonsense” of transferring provision to Gateshead.
- A1.9 stv said Scottish Borders material could sit within its own *Scotland Today* programme, which could be transmitted in the Scottish part of the Border region. This would guarantee local Borders news at 1800 and 2230, presented within a wider Scottish news context that would be directly relevant to the audience. However, such a “solution” would need ITV plc to agree a commercial deal with stv for provision of this programme feed.
- A1.10 Carlisle City Council said the ITV Border merger with Tyne Tees would lead to reduced coverage for local stories, and expressed concern that ITV plc had announced redundancy plans without waiting for the outcome of Ofcom’s consultation. This concern was echoed by Cumbria County Council, who also spoke of the local affection for ITV Border’s *Lookaround* programme. Communities feel increasingly detached from news coverage with the BBC focussing primarily on the north east. The county council also expressed concern about “the haste of ITV” with no regard to the consultation process.
- A1.11 The Isle of Man Communications Commission said, in the light of the proposed merger, viewers on the Isle of Man should receive their ITV signal from Granada, rather than from the combined new region. The Commission said this was supported by a consultation exercise conducted on the island.
- A1.12 There was less opposition to the merger of ITV West and Westcountry, but Andrew George MP, the member for St Ives, said the quality of the local coverage was likely to be superficial and reactive in future, given the severe reduction in local resources capable of producing serious investigative news broadcasting. The process had been driven more by considerations of ITV’s commercial needs rather than a desire to protect and maintain the quality and quantity of public service broadcasting.
- A1.13 In assessing the ITV regional proposals overall, the National Union of Journalists said Ofcom had too readily accepted “ITV’s pleadings” and allowed changes which seriously undermined their public service broadcasting provision. Cuts will almost certainly be irreversible and will limit the role ITV can play in any new public service broadcasting settlement. The NUJ was concerned that these proposed cuts will make it easier for ITV management to look for a further reduction in public service broadcasting commitments in future. If agreed, they should be accompanied with clear long-term guarantees that will bind ITV management, irrespective of ownership of the company. They backed criticism of ITV for beginning the process of cutting jobs before the consultation had closed – thereby presenting a fait accompli.
- A1.14 BECTU, the broadcasting union, noted ITV’s “unilateral announcement of cuts” amounting to £40 million in its regional news budget, together with proposals for cuts in other areas. The consequence will be reduced output, merged regions and severe proposed job losses.

- A1.15 BECTU's view was one of active opposition to these proposals which, they said, undermined ITV's previous public service broadcasting commitments and Ofcom's previous indication that it would not make further concessions to ITV in the current licence period. It amounted to a terminal erosion of ITV's distinctive regional character. The new regional structure would be meaningless to viewers with regions extending, for example, from Penzance to Worcester and Dumfries to Yorkshire.

### **Volume of nations and regions news**

- A1.16 There was virtually no response to proposals to reduce the volume of nations and regions news in England and Scotland. However, the Northern Ireland Assembly passed a motion which included condemnation of the proposals, alongside other changes affecting broadcasting in the Province.
- A1.17 Opposition to the proposals was also expressed by the Broadcasting Sub-committee of the National Assembly for Wales Communities and Culture Committee. The sub-committee urged the maintenance of the existing 5 hours and 20 minutes of news output in view of its significance to audiences in Wales and the lack of any alternative provision at present.

### **Production of programming other than news in the UK devolved nations and English regions**

- A1.18 Opposition to proposals to reduce the minimum amount of *non* news regional programming in the UK devolved nations raised wider negative comment than the proposals for news. Nine such responses were received from Wales, with four each from Scotland and Northern Ireland.
- A1.19 The Scottish Government said reductions in the obligations associated with the two licences held by stv (stv north and stv central) were detrimental to plurality in Scotland. The government was not convinced of the lack of viewer interest in programming other than news. Ofcom's own research had shown a gap between perceptions of the importance of programming other than news and satisfaction about its delivery. The Scottish Chambers of Commerce said additional public funding should be used to maintain a suitable level of programming other than news.
- A1.20 stv itself said there should be recognition that provision of 1.5 hours a week remained challenging, and a further diminution might be needed in the approach to digital switch-over. However, it said that it might actually over-deliver on quota - but this should be at the company's own commercial risk and not be subject to quota.
- A1.21 Dai Davies, MP for Blaenau Gwent accused ITV plc of reneging on a commitment – “effectively a legal contract” - over Welsh programming other than news. He urged Ofcom to consider re-opening the franchise process and seek an alternative news and programming provider for Wales. The National Union of Journalists in Wales said ITV Wales had planned to make 3 hours of programming other than news a week from January 2009, ensuring a good range and diversity of content with plurality for English language public service broadcasting. But after publication of Phase two, the public discovered the requirement had been halved. It condemned the proposal for a minimum of 1.5 hours of programming other than news as a ‘done deal’.
- A1.22 The Welsh Assembly Government believes the current system does not achieve the policy goal of providing sufficient media in the English language for Wales. But it

recognises that ITV Wales offers the best short term prospect for achieving reach and impact with audiences. It supports the existing provision on ITV Wales and calls for central government to provide public funding to maintain the present output.

- A1.23 The Assembly's Communities and Culture Committee and Broadcasting Sub Committee also said it understood ITV's concerns about future viability but, at present, the needs of audiences have to be balanced with the concerns of ITV. The committee expressed disappointment at the proposal to reduce the quota for programming other than news to one and a half hours. In the context of ITV's overall income and expenditure, the total budget for the ITV Wales service of around £13 million is not substantial. The Sub-committee called on Ofcom to reconsider its proposals and urged a sustained commitment from ITV Wales to provide 3 hours of programming other than news per week. Plaid Cymru also opposed the proposed cuts in programming other than news..
- A1.24 The Ofcom Advisory Committee for Wales expressed regret about Ofcom's proposals. It said the reduction to 90 minutes per week hit hard - and likely staff reductions at ITV Wales would make it hard to sustain continued quality programming production. The advisory committee expressed doubts that any settlement would last until the end of ITV's licence period in 2014.
- A1.25 The Northern Ireland Assembly Culture Arts and Leisure Committee said programmes like *UTV Life* and *Insight* provide community cohesion and enabled political debate. They said reducing UTV's quotas for programming other than news while BBC Northern Ireland is increasing its own output would reduce plurality, and leave the BBC in an unrivalled position.
- A1.26 Ofcom's Advisory Committee for Northern Ireland agreed on the need to prioritise prime time regional news on ITV, but disagreed with the reduction in programming other than news. This should be retained at 3 hrs per week because it was within the capability of the licensee to deliver this volume.
- A1.27 UTV itself, in a non-confidential part of a submission which also had confidential sections, said it had previously been "bullish" about the commercial viability of its programme commitments. Since then, the economic environment has deteriorated significantly. UTV believes the new proposal of 1.5 hrs is both sensible and sustainable, and the proposal to require this to be delivered in peak/near peak is also welcome.
- A1.28 Whilst accepting that UTV and stv faced funding gaps, BECTU said it could not agree with the proposed permanent reduction in the programming obligations. The funding issues should be remedied by alternative measures, and not by the permanent weakening of public service broadcasting obligations.

### **The views of viewers**

- A1.29 The proposed changes to ITV's regional obligations also attracted comment from viewers. For example, Kenneth Rose described the proposals for Scottish news in the ITV Border region as a "disgrace", and supported calls for an stv feed into Scottish parts of the Border area. M Percy said ITV should lose its licence. But N Holmes recognised that Ofcom could do nothing to prevent ITV cuts.
- A1.30 There were particularly strong comments from C Jones about the loss of the distinct ITV regional news programme in the East Midlands. He said he and others were

dismayed at the scaling down of regional news on ITV from 17 regions to 9 over a matter of just £40 million. He proposed some alternatives including: no bulletins in the week except the 6pm regional news magazine; commercial breaks between and after the regional news magazine (currently there are none); 5-minute advert breaks on the ITV network (as on non-terrestrial commercial broadcasters); and sponsorship of regional news magazines or increased sponsorship of ITV 1 programmes.

- A1.31 Other public respondents, who wished to remain anonymous, made observations. One said that once the regional programmes had been lost they can never be replaced. Skills and knowledge will be lost to the detriment to the public. Another said Ofcom had ignored the responses of thousands of people who objected to the plans for merging regional news provision.
- A1.32 A further respondent said the mergers – particularly in the West and Westcountry - resulted in areas which were too large. The BBC licence fee should be used to preserve regionality of news and local affairs. There was some support for this use of the licence fee from others. Another viewer expressed concern about the proposals to absorb ITV's Thames Valley regional news service into the Meridian area.

### Out-of-London production

- A1.33 The other issue to generate a significant negative reaction was the proposal for a reduction in out-of-London production for ITV network, coupled with an increase in the quota for Channel 4. Five respondents commented adversely on the overall level of out-of-London production by public service broadcasters taken together.
- A1.34 PACT, the body representing independent producers, said there was a lack of focus in the Phase two report on the out-of-London quotas and on portrayal of the different areas of the UK. The BBC and Channel 4 were particularly important in this regard, and if ITV was allowed to reduce its requirements then Channel 4 should certainly strengthen its out-of-London presence with a quota of 35 per cent, as proposed by Ofcom. Hotbed Media, an independent production company, said Channel 4 should increase its production in the UK nations and regions to 50 per cent. There should be a requirement that at least 25 per cent of its programmes were commissioned – by value - from producers with less than £5 million pa turnover. This would encourage diversity and promote smaller firms in the face of the 'super indies'.
- A1.35 The Scottish Government criticised proposals for an out- of-England quota for Channel 4 as inadequate. The 3 per cent quota suggested was described as “totally unacceptable”. The government submission referred to the Scottish Broadcasting Commission’s recommendation that Channel 4 be required to produce 8.6 per cent of its UK originations within Scotland. A clear plan for production in Scotland proportionate to its share of the UK population should be a condition of Channel 4's future role.
- A1.36 Ofcom’s Advisory Committee for Northern Ireland was among the respondents who opposed the proposed reduction in the ITV network quota to 35 per cent. This would exacerbate the already low production levels from the UK nations. However, the increase in Channel 4’s quota to 35 per cent was welcomed.
- A1.37 stv described proposals to reduce ITV’s quota as a “reward for failure”. The proposed short term regulatory change was inconsistent with a professed strong

desire to preserve public service broadcasting in the nations. Stronger quotas were needed to overcome the London-centric commissioning bias and reflect cultural diversity. This would help Scotland to develop into a centre of excellence.

- A1.38 Pinewood Shepperton Group believed that the proposed increase in Channel 4's quota will not be sufficient to offset the loss of out-of-London production by ITV, especially as Channel 4 quota does not come into effect until 2010. Channel 4 itself said it had ambitions to spend more in the UK nations. It believed it could invest more than Ofcom had proposed for a Tier 2 out-of-England quota – provided it receives a new funding settlement.

### Other issues

- A1.39 There was some comment about Ofcom proposals to allow a reduction in the quota for original productions on Five. This was proposed alongside a commitment by Five on volumes for production for children's programmes.
- A1.40 PACT said the value of Five's public assets has risen by £10 million this year and suggested this should be reflected in an increased children's offering. At the same time, Channel 4's initiative on children's programming had "already failed" because commissioning had been frozen. The Save Kids TV pressure group suggested that Five be subject to formal tier 2 quotas for children's output - particularly content for older children. This should be more ambitious than their current statements on the issue. The EU originations quota should be examined for the possibility of mandating digital channels to comply.
- A1.41 Five said it supported Ofcom's proposal to reduce its originations. The channel's public service broadcasting future depends on a schedule supported by acquisitions, so this "modest relief" would be a help.

## Annex 2

# Ofcom legal framework

## Communications Act 2003

### Ofcom's General Duties

1. Ofcom's general duties are set out in section 3 of the Communications Act 2003 (the Act) which is set out below. In carrying out its duties, Ofcom is required to secure 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 (s 3 (2) (c); and the maintenance of a sufficient plurality of providers of different television and radio services (s3 (2) (d));

Section 3 (1) and (2) of the Act provide as follows:

(1) It shall be the principal duty of OFCOM, in carrying out their functions—

(a) to further the interests of citizens in relation to communications matters; and

(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

(2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following—

(a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;

(b) the availability throughout the United Kingdom of a wide range of electronic communications services;

(c) 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;

(d) the maintenance of a sufficient plurality of providers of different television and radio services;

(e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;

(f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both—

(i) unfair treatment in programmes included in such services; and

(ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.

## Regulatory Principles

2. In performing its general duties, Ofcom must have regard, in all cases, to the principles set out in section 3 (3) of the Act:

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(b) any other principles appearing to OFCOM to represent the best regulatory practice.

3. Ofcom must also have regard, in performing those duties, to those factors set out in section 3 (4) below as appear to them to be relevant in the circumstances:

(4) (a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;

(b) the desirability of promoting competition in relevant markets;

(c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;

(d) the desirability of encouraging investment and innovation in relevant markets;

(e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;

(f) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;

(g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;

(h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;

(i) the needs of persons with disabilities, of the elderly and of those on low incomes;

(j) the desirability of preventing crime and disorder;

(k) the opinions of consumers in relevant markets and of members of the public generally;

(l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas;

(m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.

In addition:

(5) In performing their duty under this section of furthering the interests of consumers, OFCOM must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

## Definitions

3. Section 3 (14): in this section:

- “citizens” means all members of the public in the United Kingdom;
- “communications matters” means the matters in relation to which OFCOM have functions;
- “general duties”, in relation to OFCOM, means—
  - (a) their duties under subsections (1) to (5); and
  - (b) the duty which, under section 107(5), is to rank equally for the purposes of subsections (6) and (7) with their duties under this section;
- “relevant markets” means markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions.

## Ofcom’s Powers in relation to Quotas etc

4. Ofcom's powers and the regulatory regime for programming quotas for original production, news and current affairs programmes and regional programming are set out below:

### Section 278 Programming Quotas for Original productions

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing—

(a) that the time allocated, in each year, to the broadcasting of original productions included in that channel is no less than what appears to them to be an appropriate proportion of the total amount of time allocated to the broadcasting of all the programmes included in the channel; and

(b) that the time allocated to the broadcasting of original productions is split in what appears to them to be an appropriate manner between peak viewing times and other times.

(2) The proportion determined by OFCOM for the purposes of subsection (1)—

(a) must, in the case of each licensed public service channel, be such proportion as OFCOM consider appropriate for ensuring that the channel is consistently of a high quality; and

(b) may, for the purposes of paragraph (b) of that subsection, be expressed as the cumulative effect of two different minimum proportions, one applying to peak viewing times and the other to other times.

(3) A condition contained in a licence by virtue of this section may provide—

(a) that specified descriptions of programmes are to be excluded in determining the programmes a proportion of which is to consist of original productions;

(b) that, in determining for the purposes of the condition whether a programme is of a description of programmes excluded by virtue of paragraph (a), regard is to be had to any guidance prepared and published, and from time to time revised, by OFCOM.

(4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

(5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(6) References in this section, in relation to a licensed public service channel, to original productions are references to programmes of such description as the Secretary of State may by order specify as describing the programmes that are to be original productions for the purposes of this section.

(7) The power to specify descriptions of programmes by order under subsection (6) includes power to confer such discretions on OFCOM as the Secretary of State thinks fit.

(8) Before making an order under this section the Secretary of State must consult OFCOM, the BBC and the Welsh Authority.

(9) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(10) In this section—

- “peak viewing time”, in relation to a licensed public service channel, means a time that appears to OFCOM to be, or to be likely to be, a peak viewing time for that channel; and
- “programme” does not include an advertisement.

(11) Before determining for the purposes of this section what constitutes a peak viewing time for a channel, OFCOM must consult the provider of the channel.

## **News Provision etc on Public Service Television**

### **Section 279 News and current affairs programmes**

(1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing—

(a) that the programmes included in the channel include news programmes and current affairs programmes;

(b) that the news programmes and current affairs programmes included in the service are of high quality and deal with both national and international matters; and

(c) that the news programmes so included are broadcast for viewing at intervals throughout the period for which the channel is provided.

(2) That regime also includes the conditions that OFCOM consider appropriate for securing that, in each year—

(a) the time allocated to the broadcasting of news programmes included in the service, and

(b) the time allocated to the broadcasting of current affairs programmes so included,

each constitutes no less than what appears to OFCOM to be an appropriate proportion of the time allocated to the broadcasting of all the programmes included in the channel.

(3) It further includes the conditions that OFCOM consider appropriate for securing that the time allocated—

(a) to the broadcasting of news programmes included in the service, and

(b) to the broadcasting of current affairs programmes so included, is, in each case, split in what appears to OFCOM to be an appropriate manner between peak viewing times and other times.

### **Section 284 News provision on the public teletext service**

(1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing—

(a) that the service includes what appears to OFCOM to be a suitable quantity and variety of news items; and

(b) that the news items included in the service are up to date and regularly revised.

(2) Conditions imposed under this section in relation to a time when the public teletext service comprises both—

(a) an analogue teletext service, and

(b) a teletext service provided in digital form, must apply to both services but may make different provision for each of them.

### **Regional Programming**

#### **Section 286 Regional programme-making for Channels 3 and 5**

(1) The regulatory regime for every Channel 3 service includes the conditions (if any) that OFCOM consider appropriate in the case of that service for securing—

(a) that what appears to OFCOM to be a suitable proportion of Channel 3 programmes made in the United Kingdom are programmes made in the United Kingdom outside the M25 area;

(b) that the Channel 3 programmes that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;

(c) that what appears to OFCOM to be a suitable proportion of the expenditure of the providers of Channel 3 services on Channel 3 programmes made in the United Kingdom is referable to programme production at different production centres outside the M25 area; and

(d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

(2) In the case of a national Channel 3 service, subsection (1) requires the inclusion of conditions in the licence for the service only where OFCOM consider, having regard to the nature of the service, that it would be appropriate for conditions falling within that subsection to be so included.

(3) The regulatory regime for Channel 5 includes the conditions that OFCOM consider appropriate for securing—

(a) that what appears to OFCOM to be a suitable proportion of the programmes made in the United Kingdom for viewing on that Channel are programmes made in the United Kingdom outside the M25 area;

(b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;

(c) that what appears to OFCOM to be a suitable proportion of the expenditure of the provider of Channel 5 on programmes made in the United Kingdom for viewing on that Channel is referable to programme production at different production centres outside the M25 area; and

(d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

(4) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

(5) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(6) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.

(7) In this section—

- “Channel 3 programmes” means programmes made for viewing on Channel 3 in more than one area for which regional Channel 3 services are provided, including any programme made for viewing on a national Channel 3 service other than a regional programme;
- “expenditure”, in relation to a programme, means—

(a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or

(b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast;

- “programme” does not include an advertisement; and
- “regional programme” means a programme made with a view to its inclusion in a national Channel 3 service as a programme of particular interest to persons living within a particular area of the United Kingdom.

### **Section 287 Regional programmes on Channel 3**

(1) The regulatory regime for every regional Channel 3 service includes the conditions that OFCOM consider appropriate for securing—

(a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a

suitable range of programmes (including regional news programmes) which are of particular interest to persons living within the area for which the service is provided;

(b) that the regional programmes included in the service are of high quality;

(c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in that area;

(d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;

(e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing—

(i) at peak viewing times; and

(ii) at times immediately preceding or following those times.

(2) The regulatory regime for every local Channel 3 service includes the conditions that OFCOM consider appropriate for securing—

(a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of local programmes;

(b) that, in the case of each part of an area or each community for which the service is provided, the range of local programmes is a range of programmes (including news programmes) which are of particular interest to persons living within that part of that area or to that community;

(c) that the local programmes included in the service are of high quality;

(d) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the local programmes included in the service consists of programmes made in the area for which the service is provided;

(e) that the local news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;

(f) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other local programmes that are included in the service consists of programmes broadcast for viewing—

(i) at peak viewing times; and

(ii) at times immediately preceding or following those times.

(3) In the case of a local Channel 3 service, the conditions included in the regulatory regime for the service include conditions falling within subsection (1) to the extent only that it appears to OFCOM that the requirements of subsection (1) are not adequately met by conditions falling within subsection (2).

(4) In the case of a national Channel 3 service in the case of which OFCOM consider that it would be appropriate to impose conditions under this subsection, the regulatory regime for the service includes the conditions that OFCOM consider appropriate for securing—

(a) that what appears to OFCOM, in the case of that service, to be a sufficient amount of time is given in the programmes included in the service to what appears to them to be a suitable range of programmes (including regional news programmes) which are of particular interest to persons living within particular areas of the United Kingdom;

(b) that the regional programmes included in the service are of high quality;

(c) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the regional programmes included in the service consists of programmes made in the area by reference to which they are regional programmes;

(d) that the regional news programmes included in the service are broadcast for viewing at intervals throughout the period for which the service is provided and, in particular, at peak viewing times;

(e) that what appears to OFCOM, in the case of that service, to be a suitable proportion of the other regional programmes that are included in the service consists of programmes broadcast for viewing—

(i) at peak viewing times; and

(ii) at times immediately preceding or following those times.

(5) Before imposing a condition under this section, OFCOM must consult the person on whom it is to be imposed.

(6) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(7) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes in question.

(8) In this section—

- “local Channel 3 service” means a regional Channel 3 service the provision of which includes the provision (in pursuance of a determination under section 14(3) of the 1990 Act) of different programmes for different parts of an area or for different communities living within an area;
- “local programme”, in relation to a service provided for different parts of an area or for different communities, means a programme included in that service for any of the parts of that area or for any of those communities, and “local news programme” is to be construed accordingly;
- “peak viewing time”, in relation to a service, means a time determined by OFCOM to be, or to be likely to be, a peak viewing time for that service;
- “programme” does not include an advertisement;
- “regional programme”—

(a) in relation to a regional Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within the area for which the service is provided;

(b) in relation to a national Channel 3 service, means a programme included in that service with a view to its being of particular interest to persons living within a particular area of the United Kingdom;  
and “regional news programme” is to be construed accordingly.

## **Section 288 Regional programme-making for Channel 4**

(1) The regulatory regime for Channel 4 includes the conditions that OFCOM consider appropriate for securing—

(a) that what appears to OFCOM to be a suitable proportion of programmes made in the United Kingdom for viewing on Channel 4 are programmes made in the United Kingdom outside the M25 area;

(b) that the programmes for such viewing that are made in the United Kingdom outside the M25 area (taken together) constitute what appears to OFCOM to be a suitable range of programmes;

(c) that what appears to OFCOM to be a suitable proportion of the expenditure of C4C on programmes made in the United Kingdom for viewing on Channel 4 is referable to programme production at different production centres outside the M25 area; and

(d) that the different programme production centres to which that expenditure is referable constitute what appears to OFCOM to be a suitable range of such production centres.

(2) Before imposing a condition under this section, OFCOM must consult C4C.

(3) The requirement to consult is satisfied, in the case of the imposition of a condition by way of a variation of a licence, by compliance with section 3(4)(b) of the 1990 Act (obligation to give opportunity to make representations about variation).

(4) A proportion is not to be regarded by OFCOM as suitable for the purposes of a provision of this section if it constitutes less than a significant proportion of the programmes or expenditure in question.

(5) In this section—

- “expenditure”, in relation to a programme, means—

(a) expenditure which constitutes an investment in or is otherwise attributable to the making of the programme; or

(b) expenditure on the commissioning or other acquisition of the programme or on the acquisition of a right to include it in a service or to have it broadcast; and

- “programme” does not include an advertisement.

## **Section 289 Regional matters in the Public Teletext Service**

(1) The regulatory regime for the public teletext service includes the conditions that OFCOM consider appropriate for securing that the service includes what appears to them to be an appropriate proportion of material that is of particular interest to persons living in different parts of the United Kingdom.

(2) Conditions imposed under this section in relation to a time when the public teletext service comprises both—

(a) an analogue teletext service, and

(b) a teletext service provided in digital form,  
must apply to both services but may make different provision for each of them.