



## 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

Consultation

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## Section 1

# Executive Summary

**Following advice from Ofcom to the Secretary of State about future options for Channel 3 and Channel 5, she has confirmed that she does not intend to prevent the renewal of their licences.**

- 1.1 The current Channel 3 and Channel 5 broadcast licences will expire on 31 December 2014. In preparation for the new licensing period, Ofcom gave advice to the Secretary of State on whether the existing licensees could continue to operate services that would meet the purposes of public service broadcasting (PSB) on a commercially sustainable basis, in accordance with its duty under section 229 of the Communications Act 2003 (the '2003 Act'). We submitted a report to the Secretary of State ('the section 229 report') setting out our views in May 2012.<sup>1</sup>
- 1.2 In the section 229 report, we said that the Channel 3 and Channel 5 licensees had, taken as a whole, presented proposals for the delivery of PSB in the next licence period that were realistic, sustainable and commensurate with current levels of delivery. Accordingly, while noting that some amendments to their existing obligations may be required, we advised the Secretary of State that the existing licensees could make a sustainable contribution to PSB purposes in a new licensing period.<sup>2</sup>
- 1.3 In November 2012, the Secretary of State wrote to us stating that she did not intend to prevent the process of licence renewal for either the Channel 3 licensees or Channel 5. However, she said that she would be prepared to extend the licences by a year if we were unable to reach renewal settlements with the existing licensees, in order to allow for the advertisement and award of new licences to take place.
- 1.4 Following the Secretary of State's decision, we will be considering whether or not to renew the licences of the current Channel 3 and Channel 5 licensees and, if so, the terms on which renewal should be offered. This consultation forms part of our preparation for those determinations.

## **Commercial PSB channels, including Channel 3 and Channel 5, must contribute to the public service broadcasting purposes**

- 1.5 PSB services, such as those provided by the Channel 3 and Channel 5 licensees, must contribute to fulfilment of the PSB purposes set out in the 2003 Act.<sup>3</sup> At the broadest level, this means that PSB services should include programmes which cover many subjects and, taken together, maintain a high general standard and serve the needs and interests of many different audiences.
- 1.6 The specific PSB obligations to which the licensees are subject are summarised in Figure 1 and include:

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<sup>1</sup> See *Licensing of Channel 3 and Channel 5: A report to the Secretary of State under section 229 of the Communications Act 2003* ('the section 229 report') at:

[http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/c3\\_c5\\_licensing.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/c3_c5_licensing.pdf)

<sup>2</sup> See paragraphs 1.11 – 1.15 and 1.23 of the section 229 report.

<sup>3</sup> See section 264(4) and (6) of the 2003 Act.

- a) the provision of news and current affairs at both peak viewing and other times;
- b) the inclusion of original productions (programming commissioned or produced specifically for the channel), of programmes made by independent producers, and of productions made outside London; and
- c) in the case of Channel 3 licensees, the provision of regional news and non-news programming, and participation, in conjunction with all the other Channel 3 licensees, in arrangements for the provision and broadcast of programming across the Channel 3 network.

1.7 In most of these areas, Ofcom must determine *the appropriate level* at which to set those obligations, having regard to the PSB purposes, commercial sustainability of the licensed services and Ofcom’s general duties under section 3 of the 2003 Act.

**Figure 1: summary of public service broadcasting obligations**

Type of obligation	Obligation	Commercial PSBs affected
Core genre obligations	To show an appropriate amount of national and international news (overall and in peak)	All commercial PSBs
	To show an appropriate amount of regional news and non-news programmes (overall and in peak)	Channel 3 licensees only
	To show an appropriate amount of current affairs programmes (overall and in peak)	All commercial PSBs
Content production and investment obligations	To show an appropriate amount of original programming (overall and in peak)	All commercial PSBs
	To ensure a suitable proportion & range of programmes by spend & volume are made outside the M25	All commercial PSBs
	To ensure a minimum of 25% of programming is allocated to independent productions	All commercial PSBs
	To draw up, revise & comply with a code for commissioning from independent producers	All commercial PSBs
Structural obligations	To ensure approved networking arrangements are in force	Channel 3 licensees only
	To achieve the greatest possible level of coverage for PSB channels	All commercial PSBs

**We invite views on proposed changes to the level of PSB obligations for the existing licences, particularly news provision in the nations and English regions. These changes would be carried forward into the renewed licences.**

- 1.8 In preparing the section 229 report, we invited submissions from licensees and others about the level of PSB obligations that the licensees might be able to provide in a new licence period.
- 1.9 The licensees told us that, in broad terms and with some amendments, their existing PSB obligations could continue to be sustainable during the next licence period. With

one exception<sup>4</sup>, they have not proposed any changes to their network programme and production obligations – in respect of news and current affairs, original production, and Out of London production. We set out what these obligations are in section 2, and explain why, subject to consultation, we consider that it would be appropriate to maintain those obligations at the current levels.

- 1.10 Some Channel 3 licensees argued that amendments to their regional programming commitments would help to ensure the long-term sustainability of such content. We set out their proposals in section 3 together with our initial assessment. In particular:
- a) ITV plc proposed that the regional news services that resulted from merging news services in 2009 should again become more localised services. However, to offset the cost of this change, the amount of regional content required in each of its English licences (including Border) would be reduced; and
  - b) UTV asked that its regional non-news obligations be reduced by half an hour a week to bring them in line with those in the other devolved Nations (one and half hours a week), now that digital switchover is complete.
- 1.11 In her letter to us in November 2012, the Secretary of State noted that under ITV's proposals, viewers in the south of Scotland would not receive the same level of programming about Scotland as those living in central and Northern Scotland (who are served by the STV licensees).<sup>5</sup> She said that the quality and plurality of news provision was of the utmost importance. In the light of these concerns, ITV has proposed to supplement the more localised service it had proposed for the Border area by scheduling a weekly current affairs programme, in part to provide viewers in southern Scotland with broader coverage of Scottish politics. We explain this proposal and related options in section 4, together with our initial assessment.

### **We would also welcome the views on the impact of possible amendments to the definition of peak-time across all PSB services.**

- 1.12 In PSB licences, 'peak time' is defined as the period from 6pm to 10.30pm and all the PSB licensees have programming obligations in relation to their broadcast during peak time. For example, Channel 3 licences require that a specified proportion or amount of original productions, news, current affairs, nations and regional programming, is shown in peak time. UTV and STV have proposed that, in relation to regional programming, peak time is extended to 11pm, allowing them to meet their commitments to show some regional programming in peak by scheduling programmes between 10.30pm and 11pm.
- 1.13 We consider that a common definition of peak time across the PSB licences would be appropriate. Accordingly, a change to the definition of peak time would affect the delivery of the peak time obligations of other PSB licensees and so could impact their viewers, as well as viewers of the STV licensees and UTV. Ofcom believes that we need to have a better understanding of the potential consequences for both viewers and licensees before deciding whether to consult on changes to the definition of peak time, and if so, what options to consult upon.

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<sup>4</sup> Channel 5's suggestion that it was no longer necessary for it to meet an Out of London production quota, discussed in paragraph 2.37 to 2.40 of this document.

<sup>5</sup> See *Letter from the Secretary of State to Ofcom*, 21 November 2012, at: [http://www.culture.gov.uk/images/publications/Maria\\_Miller\\_letter\\_to\\_ed\\_richards.pdf](http://www.culture.gov.uk/images/publications/Maria_Miller_letter_to_ed_richards.pdf)

- 1.14 We are therefore inviting views generally on this issue and welcome any information that stakeholders are able to provide on the potential ramifications of such a change. We will take these into account in deciding whether to pursue the proposal at a future date.

**Later in the year, we will publish a statement setting out our decisions on the licence condition proposals we have made.**

- 1.15 Alongside this document, we have today issued two further consultations explaining our intention to establish a separate Channel 3 licence in Wales, splitting the existing Wales and West licence, and our proposed methodology for determining the financial terms of new licences.
- 1.16 Respondents are invited to consider the proposals set out in this consultation alongside these other documents. We also refer respondents to the analysis set out in the section 229 report, which informs the proposals in this consultation.
- 1.17 The closing date for responses to this consultation is 2 May 2013. We intend to publish a statement setting out our conclusions on licence obligations as soon as possible thereafter.

## Section 2

# Network programme and production obligations

## Introduction

2.1 This section:

- a) explains the specific PSB network programme and production obligations applying to Channel 3 and Channel 5 licensees;
- b) summarises how they meet these obligations at present; and
- c) invites the views of interested parties on Ofcom's initial assessment that these obligations remain appropriate and sustainable for the next licence period.

## How network programme and production obligations have evolved

2.2 The public service remit of the Channel 3 and Channel 5 licensees is the provision of a range of high quality and diverse programming.<sup>6</sup> In addition to fulfilling that remit, the licensees must also comply with specific licence obligations on the programming and productions to be included in their services. These obligations are intended to secure that they make a sufficient contribution to the PSB purposes.

2.3 The value of PSB status to Channel 3 and Channel 5 licensees has declined in recent years, due in large part to the loss of exclusivity resulting from the transition from a few analogue channels to the many digital channels now available to viewers. In light of the diminished value of PSB status, Ofcom has sought to identify and prioritise those aspects of PSB content most valued by audiences.

2.4 Ofcom last examined commercial public service broadcasting during our second PSB review, completed in 2009.<sup>7</sup> As part of that review, Ofcom concluded that after 2014 the public service commitments of Channel 3 and Channel 5 should focus on:

- a) news (at a UK, Nations and regions level) and current affairs, where plurality is particularly valued as critical to a well-functioning democracy; and
- b) statutory requirements to secure appropriate levels of original, independent and Out of London<sup>8</sup> production, and guidance on commissioning independent productions, aimed at ensuring that the associated quota helped to stimulate a thriving independent production sector.

2.5 In their submissions to us for the purposes of the s.229 report, the licensees did not propose changes to their programme and production obligations, other than:

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<sup>6</sup> Section 265(2) of the 2003 Act.

<sup>7</sup> See Ofcom's Second Review of Public Service Broadcasting at:

[http://stakeholders.ofcom.org.uk/consultations/psb2\\_phase2/statement/](http://stakeholders.ofcom.org.uk/consultations/psb2_phase2/statement/)

<sup>8</sup> 'Out of London' production refers to programmes made outside the M25 that meet criteria published by Ofcom ([http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/reg\\_prod/](http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/reg_prod/)).

- a) ITV's proposals in relation to regional programming (detailed in Sections 3 and 4); and
- b) Channel 5's submission in relation to Out of London productions (detailed in paragraphs 2.37 to 2.40 below.

## Channel 3

### National and international news and current affairs

- 2.6 The national and international news obligations on the Channel 3 licensees have remained at the same levels since 2003. Each regional licensee must deliver 365 hours of national and international news per year, of which 125 must be in peak-time. In 2011, the most recent year for which figures are available, the Channel 3 licensees exceeded these obligations, delivering a total of 392 hours of news programming, including 246 hours in peak viewing periods.
- 2.7 In accordance with section 280 of the Communications Act 2003, these obligations are fulfilled on behalf of the Channel 3 licensees by ITN, their appointed news provider, which provides news programming for simultaneous broadcast across the Channel 3 network.
- 2.8 Channel 3 licensees must also show 43 hours of current affairs per calendar year, of which at least 35 hours must be shown in peak-time. In 2011, Channel 3 showed 55 hours of current affairs programming,<sup>9</sup> compared to 66 hours in 2010 and an average of 86 hours in each of the previous five years.<sup>10</sup>
- 2.9 Channel 3 licensees have not proposed any changes to their national and international news and current affairs obligations.

### Original productions

- 2.10 The quota for original productions is at the core of the PSB obligations of the Channel 3 licensees: 65% of Channel 3's overall schedule must meet the criteria for original programming, including 85% of programmes shown in peak. Programming from all genres contributes to the delivery of this quota, including sports, factual, drama and arts programming.
- 2.11 The Channel 3 licensees have consistently exceeded their original productions quota, particularly that relating to peak time broadcasts. In each of the five years up to and including 2011, no less than 95% of content in peak time had been commissioned for the channel. The amount of original content shown throughout the schedule during 2011 – at 78% - is also significantly higher than required, although it has declined in recent years from a high of 90% in 2007.<sup>11</sup>
- 2.12 Although it is clear that Channel 3 licensees, collectively, could afford to comply with higher original production quotas, both overall and in peak, we do not consider that increased quotas are necessary to achieve the objective set out in legislation of ensuring that 'the channel is consistently of a high quality'.<sup>12</sup> Accordingly, given the

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<sup>9</sup> Network compliance report 2011

(<http://stakeholders.ofcom.org.uk/binaries/research/statistics/2012June/network-compliance.pdf>)

<sup>10</sup> Section 229 report, p. 19

<sup>11</sup> Network compliance report, 2011

<sup>12</sup> Section 278(2)(a) of the Communications Act 2003

requirement placed upon Ofcom to have regard, amongst other things, to the principle under which regulatory action should be targeted only at cases in which action is needed, we do not consider that it would be appropriate to increase the targets.

- 2.13 The Channel 3 licensees have not proposed any changes to their original productions obligations.

### **Independent productions**

- 2.14 All of the PSBs are required to ensure that not less than 25% of the total amount of qualifying original programming that they broadcast is allocated to a range and diversity of independent productions. Uniquely among the PSB quotas, this minimum level is specified in legislation.
- 2.15 The Channel 3 licensees have consistently commissioned a higher proportion of programmes from independent producers than required. In 2011, 38% of qualifying programming commissioned by the network came from the independent sector.<sup>13</sup>
- 2.16 Although it would be open to Ofcom to increase the size of the independent production quota, and that (at present) the costs would be sustainable, we do not consider that increased quotas are necessary to secure a broad 'range and diversity of independent productions'.<sup>14</sup> Accordingly, given the requirement placed upon Ofcom to have regard, amongst other things, to the principle under which regulatory action should be targeted only at cases in which action is needed, we do not consider that it would be appropriate to increase the targets.
- 2.17 The Channel 3 licensees have not proposed any changes to their independent productions obligations.

### **Out of London production**

- 2.18 Ofcom is required to set licence conditions for both the Channel 3 licensees and Channel 5 to ensure that, in terms of both volume and expenditure, a suitable proportion of Channel 3 and Channel 5 programmes made in the UK are produced outside the M25 area. A similar requirement applies to Channel 4. The quotas which we have set to implement this requirement are known as the Out of London quotas.
- 2.19 Following our first PSB review in 2005, we increased the Out of London quotas on the Channel 3 licensees from 33% of qualifying content by volume and 40% of original programming by expenditure to 50% by volume and spend.
- 2.20 During the second PSB Review, we noted that meeting these revised obligations had placed a significant cost on the Channel 3 licensees and that it was becoming increasingly difficult for them to sustain. Consequently, they were being met in part by long-running shows including quiz and other studio-based programming, which had contributed little to diversity. We subsequently cut the Channel 3 obligation to 35% by both spend and volume.
- 2.21 In recent years, the Channel 3 licensees have comfortably met the volume quota and also met the spend quota. In 2011 the volume achieved was 48% and spend

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<sup>13</sup> Network compliance report, 2011

<sup>14</sup> Section 277(1) of the Communications Act 2003

achieved was 50%, against a quota of 35%.<sup>15</sup> ITV exceeds the quota through a combination of high and low value productions, ranging from *Nightscreen*, an animated sequence containing programming information aired during late night slots, and flagship, high value content, such as *Coronation Street* and *Emmerdale*. Channel 3 licensees have not proposed any changes to their Out of London productions obligations, and we see no compelling reasons either to increase or reduce the current obligations. A reduction would lessen the contribution that Out of London productions make to the scale of regional production across the UK, while an increase would diminish the discretion Channel 3 licensees have about where to commission or produce programmes, which could impact their ability to manage their businesses commercially, and hence to provide an attractive service to viewers.

## Ofcom's initial assessment

2.22 For the reasons set out above, we consider that the current level of network programme and production obligations would remain appropriate for the next licence period. Having regard to the fact that the Channel 3 licensees are not seeking changes to these obligations, and to the fact that Channel 3 licensees have comfortably met the network quotas in recent years, we consider that there is currently no reason to conclude that they should not remain sustainable over the next licence period.

## Channel 5

### National and International News and Current Affairs

2.23 Channel 5's obligations for UK news were last reviewed in 2010. At that time we decided to reduce the requirements from 408 hours in each calendar year to 260 hours (the peak time obligation remained at 100 hours) in order that it could concentrate its resources on its most watched bulletins. In 2011, Channel 5 exceeded both obligations, delivering a total of 280 hours of news programming, including 117 hours in peak<sup>16</sup>.

2.24 Channel 5's peak time news programme bulletin, shown at 1830 on weekdays, receives a notably lower audience – 250,000 – than that shown on any of the other PSB networks. This may in part be a consequence of its bulletin at 1700 which draws an audience that of c.650,000 viewers, equivalent to that achieved by Channel 4's 1900 news programme, and which reaches a higher proportion of viewers from DE socio-economic groups than any of the other main television bulletins.<sup>17</sup>

2.25 In relation to current affairs, Channel 5 must show 130 hours of current affairs per calendar year, of which at least 10 hours must be in peak-time. In practice, Channel 5 significantly exceeds its total current affairs obligation, showing 475 hours of programming, primarily as a result of its morning phone-in show, *The Wright Stuff*.<sup>18</sup>

2.26 Ofcom considers that the current obligations in relation to news and current affairs make an important contribution to plurality, but we do not consider it necessary to increase the obligations in order to safeguard this benefit to citizens and consumers. Noting that Channel 5 has not proposed any changes to its news and current affairs obligations, we consider that the current level is likely to be sustainable over the

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<sup>15</sup> Network compliance report, 2011

<sup>16</sup> Network compliance report, 2011

<sup>17</sup> See Figure 17 of the section 229 report, after paragraph 3.55.

<sup>18</sup> Network compliance report, 2011

course of the next licence term, and that no change to the licence conditions is required.

- 2.27 Channel 5 has not proposed any changes to its international and national news and current affairs obligations.

### **Original productions**

- 2.28 In 2003, Channel 5 was required to ensure that at least 51% of its programming content qualified as original programming, increasing by 2% a year to 60% in 2009 and subsequent years.
- 2.29 Following Ofcom's first PSB review, we concluded in 2005 that a progressively increasing quota would be unsustainable given the limited benefits which the broadcaster received from PSB status (given, for example, that it was then available in only approximately 80% of UK homes) and set a fixed quota at 55%. In 2009, following the second PSB review, the quota was reduced to 50%. Channel 5's peak-time obligations in relation to original productions were reduced at the same time to 40% from the 42% set in 2003.
- 2.30 Ofcom notes that, in recent years, there have been occasions when Channel 5 has only just met its obligations in relation to original production. We note too that Channel 5 revenues are significantly lower than those of Channel 3, and that this has a bearing on the volume of high quality original production it can reasonably be expected to commission or produce. Given these circumstances, we consider that the current quota is appropriate and, as set out below, is consistent with Article 16 of the Audiovisual Media Services Directive.<sup>19</sup>
- 2.31 Neither do we consider that it would be appropriate to further reduce Channel 5's original production quota. In setting the current level, Ofcom had regard to the United Kingdom's obligations under Article 16 of the Audiovisual Media Services Directive to ensure, where practicable, that broadcasters reserve a majority of their transmission time for European productions (defined in ways that largely correspond to the definition of 'original productions' for the purpose of this quota). Accordingly, we propose no change to Channel 5's original production quota.
- 2.32 Channel 5 has not proposed any changes to its original productions obligations.

### **Independent productions**

- 2.33 Channel 5, like Channel 3 licensees, is required to ensure that not less than 25% of the total amount of qualifying original programming is allocated to broadcasting a range and diversity of independent productions. As explained in paragraph 2.14 to 2.17 above, Ofcom could increase but not reduce this percentage.
- 2.34 Like Channel 4, Channel 5 has to date been predominantly a publisher broadcaster with only a small in-house production unit. Consequently, it has consistently and significantly exceeded its obligations. In 2011, 91% of qualifying programming commissioned by Channel 5 came from the independent sector.<sup>20</sup>
- 2.35 Ofcom notes that Channel 5 has no difficulty in meeting the current quota, and might well be able to sustain a higher quota. However, we do not consider that increased

<sup>19</sup> Directive 2010/13/EU OJ L 95 15.4.2010

<sup>20</sup> Network compliance report, 2011

quotas are necessary to secure a broad 'range and diversity of independent productions'.<sup>21</sup> Accordingly, given the requirement placed upon Ofcom to have regard, amongst other things, to the principle under which regulatory action should be targeted only at cases in which action is needed, we do not consider that it would be appropriate to increase the targets.

2.36 Channel 5 has not proposed any changes to its independent productions obligations.

### **Out of London productions**

2.37 Programmes produced Out of London must account for at least 10% of Channel 5's programme expenditure and output. These obligations are significantly lower than those faced by the other PSBs, in recognition of the difference in regulatory assets that Channel 5 receives from PSB status, compared to other PSBs.<sup>22</sup> In 2011, Out of London content accounted for 11% of Channel 5's qualifying programming by volume and 21% by value.<sup>23</sup>

2.38 In its response to our open letter, Channel 5 argued that this requirement was no longer necessary given the number of well-established production hubs across the UK and the scale of investment made in recent years by the publicly-owned PSBs, the BBC and Channel 4. In particular, it suggested that the obligation could have a detrimental, if not perverse, impact on its commissioning policy, potentially requiring the channel to invest in programmes it might not want.

2.39 Ofcom is required by section 286 of the Communications Act 2003 to ensure that the Out of London quota is not set at a level that 'constitutes less than a significant proportion of the programmes or expenditure in question'.<sup>24</sup> Under section 263(4) of the Act, it is open to the Secretary of State to provide by order that such a condition be excluded from the regulatory regime applying to Channel 5. Until and unless that happens, Ofcom is not empowered to exempt Channel 5 from this requirement.

2.40 We consider that the current 10% quota by volume and spend is significant but that the scope to reduce that proportion still further, while still fulfilling the statutory requirement, is likely to be limited. Furthermore, as we explained in our section 229 report, because the quota is calculated on the basis of programming that excludes acquired programming, the actual volume of Out of London programming required of Channel 5 is relatively modest.<sup>25</sup> As a result, when advising the Secretary of State, we were not persuaded that this was an unsustainable obligation, and we remain of that view.

### **Ofcom's initial assessment**

2.41 For the reasons set out above, we consider that the current level of network programme and production obligations required from Channel 5 would remain appropriate for the next licence period. In reaching this conclusion, we recognise the more modest contribution to PSB purposes which Channel 5 might be expected to make. However, we do not consider that it would be appropriate to reduce the obligations placed on Channel 5 further without calling into question Channel 5's contribution to PSB purposes.

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<sup>21</sup> Section 277(1) of the 2003 Act.

<sup>22</sup> See section 6 of the section 229 report for further detail.

<sup>23</sup> Network compliance report, 2011

<sup>24</sup> Section 286(6) of the 2003 Act. See also section 286(3)(a) of the 2003 Act.

<sup>25</sup> See paragraph 4.21 of the section 229 report.

- 2.42 As regards sustainability, Ofcom notes that Channel 5 has continued to meet its licence obligations, and has only proposed changes in respect of its Out of London quota. Given the statutory constraints, we do not consider that there is much scope to adjust the level of this quota, nor in practice do we think that it imposes a significant burden. Accordingly, we consider that there is currently no reason to conclude that the obligations should not remain sustainable over the next licence period.

*Q1 Do you agree that the existing obligations on Channel 3 and Channel 5 licensees in respect of national and international news and current affairs, original productions, and Out of London productions should be maintained at their current levels? If not, what levels do you consider appropriate, and why?*

## Section 3

# Nations and regions programme and production obligations for the Channel 3 licensees

## Introduction

- 3.1 In this section, we:
- a) summarise the evolution of regional programming obligations;
  - b) set out the specific proposals made by the Channel 3 licensees about content for the nations and regions (with the exception of additional proposals for the Border region, which are dealt with in section 4), and
  - c) invite views on the obligations that should be set out in their licences.
- 3.2 Figure 3 below is a map of the current Channel 3 licensed areas. The 2003 Act requires Ofcom to set conditions to ensure that each of the Channel 3 licence holders deliver in their licensed area a suitable level of high quality regional programming as part of their licence commitments. The 2003 Act makes clear that, among other things, regional programmes are designed to be of particular interest to people living within the licence area. Among the commercial PSBs, only Channel 3 licensees face specific regional programming obligations.

## How regional programming obligations have evolved

- 3.3 From 1955, when the first commercial PSB licences were awarded, until the 1980s, the regional ITV broadcasters provided one news service in each licence area. In the 1980s, however, when new licences became available, applicants began making commitments to provide more localised news services in sub-regions. In some cases, this resulted in dedicated local news programmes, in others 'local opt outs' during regional news programmes. The high fixed cost of regional news represented the biggest opportunity cost of PSB status for the Channel 3 licensees. However, as only PSB services had access to the analogue frequencies guaranteeing near universal reception in UK households, they benefited from privileged access to advertising revenue.
- 3.4 From the late 1980s, the growing penetration of digital services eroded this privilege over time. In the second PSB review, we acknowledged that the value of PSB status was diminishing. By that time, ITV plc offered 15 separate main regional news programmes across the 10 regional licences that it then held. The two smallest regions by population – Border and Westcountry – additionally offered short variations within their respective services at a sub-regional level: four in Westcountry, and a split between the English and Scottish parts of Border.
- 3.5 In response to the second PSB review, each of the Channel 3 licensees suggested changes intended to make the provision of regional content sustainable over the short to medium term. Amongst other things, ITV plc proposed mergers of the regional news operations across two licence areas for Border and Tyne Tees, and for

West and Westcountry), as well as an end to separate main news programmes for all sub-regions.

- 3.6 Ofcom concluded, given the importance that viewers attach to regional news, that the PSB obligations of the Channel 3 licensees (and Channel 5) should be focused in this area but agreed that consolidation by ITV in regional news provision and a reduction in volume was appropriate to ensure sustainability.
- 3.7 Accordingly, Ofcom agreed that ITV could consolidate the 15 regional news programmes then provided in England (including Border) into 8 (albeit with some local opt-outs within that), and reduce the weekly total of regional news and other regional content. We set out in paragraphs 3.9 to 3.11 and Annex 3 below the regional obligations that we imposed on the Channel 3 licensees following the second PSB review and in Annex 4 how they fulfil those obligations in the programming they broadcast.
- 3.8 The context for nations and regions content continues to evolve. New local TV licences are being awarded in 19 towns and cities across the UK (Belfast, Birmingham, Brighton, Bristol, Cardiff, Edinburgh, Glasgow, Grimsby, Leeds, Liverpool, London, Manchester, Newcastle, Norwich, Nottingham, Oxford, Preston, Sheffield and Southampton) and further local TV licences may be awarded thereafter. In Northern Ireland, three channels from the Republic of Ireland (RTE1, RTE2 and TG4), which had been available in some parts through overspill, achieved near universal coverage (94%) when they began being distributed on an additional digital terrestrial television (DTT) multiplex from digital switchover in October 2012.

### **Current regional obligations**

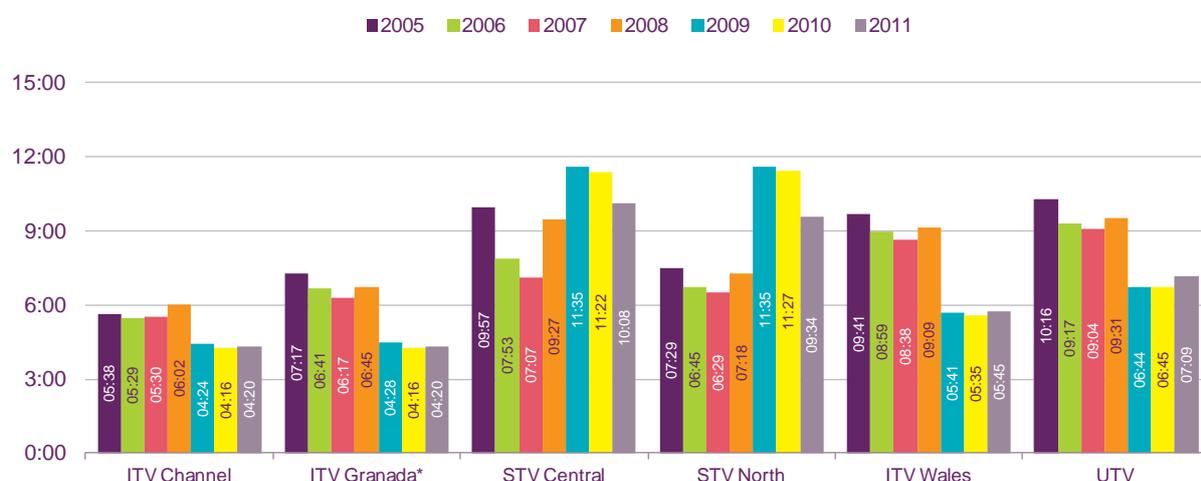
- 3.9 The regional programming licence obligations for the Channel 3 licensees are cast in broad terms and do not, for example, specify the duration and scheduling of specific news programmes. The main requirements typically included in a Channel 3 licence are set out below:
- a) a minimum number of hours and minutes of news and other regional content to be broadcast per week (on average) (currently 4 hours in the English regions, Border and the Channel Islands; 5.5 hours in Wales and the STV regions and 6 hours in Northern Ireland);
  - b) a minimum number of hours and minutes of regional news to be broadcast per week (on average) in peak viewing hours (currently 2 hours 15 minutes in the English regions and Border; 2 hours 30 minutes in Wales, the STV regions and Northern Ireland);
  - c) the scope to share news programmes across sub-regions, and in some cases, across licence areas;
  - d) a minimum number of minutes of other regional content to be broadcast per week (on average) between 5pm and 11.30pm; and
  - e) a minimum proportion of regional programming to be made in the licensed area – in most cases, 99%.
- 3.10 Annex 3 provides a more detailed set of the specific regional obligations by licence area and news region.

3.11 It should be noted that all minutage figures are ‘gross’ – thus a requirement to show 30 minutes of news would represent a requirement to schedule a news programme in a 30-minute slot, which might also include a weather bulletin, advertising, programme trailers and continuity announcements.

### Current provision of regional content

3.12 Annex 4 sets out how each of the Channel 3 licensees discharges their regional news programming obligations by licence area and news region. As shown by the bar chart in Figure 2 below, the amount of regional content available to viewers varies. STV in particular has sought to transmit higher amounts of programming than required by its licence. In contrast, ITV plc shows much lower levels of regional content in English regions, albeit still in line with licence obligations.

**Figure 2: Average hours of regional programming per week**



Source: Ofcom/broadcasters \*Granada figures are used as a proxy for the Channel 3 English regions. Note: Figures exclude programmes aired between 00:30-09:25

### Proposals for change

3.13 In 2011, Ofcom published an open letter inviting the views of interested parties on the level of PSB obligations which the Channel 3 and Channel 5 licensees should provide in the next licence period.<sup>26</sup> In response, ITV and UTV proposed amendments to their regional programming commitments, though STV did not. Their current proposals are described below and summarised in Annexes 3 and 4 below. The proposals in relation to Border and our consideration of them is set out separately in section 4.

<sup>26</sup> Open letter about a report by Ofcom to the Secretary of State under s.229 of the Communications Act 2003, Ofcom, 4 October 2011 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/Open-letter.pdf>)

## English regions (including Border) – regional news programming

- 3.14 ITV has set out its proposals in a document published alongside this consultation document.<sup>27</sup> In brief, ITV is proposing to revert from eight news regions (with some sub-regional opt outs) to the 14 news regions in England (including the Border area) that it provided before 2009. Annex 1 to ITV's document sets out the detailed proposals for each of its licences.
- 3.15 Within England, the existing separate services for Granada and London would continue. However, the separate services for the licensed areas of Tyne Tees and Border and for the West of England and South West England and for the following sub-regions within individual licence areas would be restored:
- a) Yorkshire (North) and Yorkshire (South);
  - b) East Midlands and West Midlands;
  - c) Anglia (West) and Anglia (East);
  - d) South East England (Kent & Sussex) and Southern England (with a local opt-out for Thames Valley news); and
- 3.16 As now, each of these services would be produced from one of eight hubs: Norwich (for Anglia), Gateshead (for Tyne Tees and Border), Birmingham (for Central), Manchester (for Granada), Whiteley (for Meridian), Bristol (for ITV West and Westcountry), Leeds (for Yorkshire) and London.
- 3.17 Although there would, in effect, be more 'news regions', ITV has proposed that the total weekly minutage of news and current affairs required in an average week (excluding those with Bank holidays) in each area would be reduced from 4 hours of regional programming (comprising 3 hours 45 minutes of news, and 15 minutes of non-news, including current affairs) to 2 hours and 30 minutes.
- 3.18 In each of these 'news regions', ITV says it would interpret the requirement by producing a main early evening news programme (in addition to the national and international news) which would include 20 minutes of regional (or local) news and weather. This 30 minute programme could include up to 10 minutes 'out of area' material adapted to interest a local audience, mixed in with regional news. However, there would be no licence obligation for ITV to do more than an average of 20 minutes of regional news and weather in peak (currently 6pm to 10.30pm). From time to time, the 20 minutes of regional news would include items that were relevant across the boundaries of news regions (e.g. a story about the Yorkshire County Cricket Club would be of interest to viewers in both North Yorkshire and South Yorkshire).
- 3.19 Outside peak, there would be cuts in news minutage, but with more localised bulletins in some places, although ITV's current proposal is to continue the present number of news bulletins. So, on weekdays, lunchtime bulletins would be reduced from 6½ minutes to 3 minutes, and late evening bulletins from 10 minutes to 5 minutes. The two daily bulletins at weekends would also be reduced from 10 minutes to 5 minutes. As noted above, this reduction would be offset by the fact that in many

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<sup>27</sup> *ITV's proposals for Nations and Regions News for a new Channel 3 PSB Licence* ('ITV's Proposals'), February 2013, ITV plc <http://stakeholders.ofcom.org.uk/binaries/consultations/c3-c5-obligations/annexes/itvs-proposals.pdf>

news regions the programming would be more localised and so more relevant to individual viewers.

- 3.20 ITV suggests that these proposals would be sustainable and would have a number of benefits. Amongst other things, ITV suggests that they would:
- a) increase the local focus of programmes in the majority of licence areas, providing news coverage of more interest and resonance for the audience;
  - b) create a more focused news agenda with a high proportion of hard news, as there would be less need to fill programmes with softer material on slow news days;
  - c) preserve an effective newsgathering machine; and
  - d) maintain ITV's ability to broadcast pan-regional stories within licence areas, as stories demanded it.
- 3.21 ITV also noted that, in focus group research carried out for it by an independent research company, these proposals were accepted and in most cases welcomed by participants<sup>28</sup>.

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<sup>28</sup> A copy of this research can be found on Ofcom's website at <http://stakeholders.ofcom.org.uk/binaries/consultations/c3-c5-obligations/annexes/ITV-Regional-news.pdf>

Figure 3: Map of Channel 3 licensed areas, showing regions and sub-regions (local) areas



Note: In parallel with this consultation, we are consulting on splitting the licence for Wales and the West of England to create a stand-alone licence for Wales and adding the West of England to the South West of England licence. The West of England and South West England would then form two sub-regions within the new licence area. The West is therefore shown separately on this map.

## Non-news programming in England

- 3.22 The current licence obligations for each region in England are 15 minutes per day, (of which 14 minutes must be scheduled between 5pm and 11:30 pm. These would remain unchanged. Border is dealt with separately below.

### Ofcom's initial assessment

- 3.23 Ofcom set out its preliminary assessment of ITV's proposals for the English regions in the section 229 report. We considered that ITV's proposals had the potential to deliver more localised and news-driven content, potentially addressing viewers' needs within the scope of existing costs.
- 3.24 We consider it likely that viewers would prefer the restoration of more local services, and that this may be a better trade-off than retaining the status quo. While viewers might well prefer to retain a full 30 minutes of local news in early evening bulletins, we do not consider that it is likely to be affordable over the term of the next licence period. Moreover, it should be noted that, for many viewers, the current arrangements for news bulletins covering large areas of the UK inevitably means that much of the news is not of immediate relevance to the region in which people live.
- 3.25 As regards the proposals to reduce the length of off-peak and weekend news bulletins, Ofcom notes that these attract much smaller audiences than those for the main early evening bulletin (see, for example, the viewing patterns shown in Figures 6, 7 and 8 of section 5), and considers that concentrating resources on that bulletin will deliver the greatest benefit to consumers. The retention of bulletins throughout the day would still enable stories of major regional interest to be covered.

### *Impact assessment*

- 3.26 In our section 229 report, we assessed the commercial sustainability of the Channel 3 licences in the light of information provided by ITV, STV and UTV, much of it confidential and therefore redacted from the published version of the report.<sup>29</sup> In respect of its licences, ITV plc said that licences renewed on the basis of its proposals would be likely to be sustainable for the next licence period. Ofcom's own conclusions, based on licensees' submissions and our own analysis, is that the proposals should be sustainable for the next licence period (although of course this cannot be guaranteed for the entirety of the licence term, given the potential for changes in the market, technology and consumer behaviour).<sup>30</sup>
- 3.27 In respect of the regional programming proposals, we consider that many viewers will benefit from more relevant regional news than they do under the current arrangements. There is no reason to consider that accessibility will be reduced by these proposals since bulletins will continue to be broadcast regularly throughout the day and there will be a significant bulletin (albeit of reduced minutage) during the peak period. In line with our finding in the section 229 report, there is a cost associated regional programming and by reducing the volume of regional output, ITV will reduce its costs of provision and thereby help to ensure the sustainability of these licences. We also have had regard to the evidence cited in the section 229 report that around 60% of viewers in England are content with the regional news provision from

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<sup>29</sup> Paragraphs 6.2 to 6.122, section 229 report.

<sup>30</sup> See paragraph 6.84, section 229 report.

ITV and that the evidence of viewing levels suggests that this type of programming is of less importance than it is to viewers in the devolved nations.<sup>31</sup>

- 3.28 Accordingly, Ofcom is proposing to modify the English regional Channel 3 licences in line with the proposals submitted by ITV

*Q2 Do you agree with ITV's proposals for changes to its regional news arrangements in England, including an increase in the number of news regions in order to provide more localised services in many areas, coupled with a reduction in overall news minutage?*

## Northern Ireland

- 3.29 UTV considered that its current regional news obligations (to provide a weekly average of four hours of content) would continue to be sustainable throughout the next licence period. As a result, it did not propose any amendments to this obligation.

- 3.30 UTV noted, however, that under the terms of its current licence, it was obliged to deliver a minimum of two hours of non-news regional content each week: 30 minutes more than in any other Channel 3 licence area. Accordingly, UTV asked Ofcom to bring its licence into line with those which currently apply in Wales and to the STV licensees in Scotland by reducing its weekly non-news obligations to 90 minutes. Specifically, UTV said that:

- a) the current arrangements under which Northern Ireland, despite having a smaller population than either Scotland or Wales, had a higher programme quota than licensees in those areas was inequitable;
- b) part of Ofcom's rationale for retaining the two hour quota in 2009, that UTV would benefit from analogue revenues resulting from a later move to digital-only broadcasting than in either Scotland or Wales, was no longer relevant; and
- c) UTV currently delivers more programming than required under its quota and was likely to continue to overproduce even with a lower regulatory limit at its own commercial risk. The change would, however, enable it to remove some of its less popular regional content from the schedule and divert "the effort and resources committed to this programming... into other public service output which would be more appealing to a larger audience in peak time."

- 3.31 UTV also emphasised that, in the event that Ofcom extended the definition of peak-time programming, it would commit to continuing to broadcast its existing late evening current affairs programme, UTV Live Tonight, "*for the first 5 years of the Licence*".

## Ofcom's initial assessment

- 3.32 In our section 229 report, we said that, as a principle, we consider that equivalent obligations should apply in Scotland, Wales and Northern Ireland in relation to news and current affairs. We said that we would look again at licensees' regional obligations after the Secretary of State had responded to the section 229 report. We note that UTV is currently required to provide 2 hours of non-news programming (including current affairs) in Northern Ireland whilst the corresponding obligations in Scotland and Wales are for 90 minutes.

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<sup>31</sup> See paragraphs 3.45 – 3.51, the section 229 report.

### *Impact assessment*

- 3.33 We note that UTV has said that it has no plans to reduce actual provision of regional non-news content to 90 minutes, though such assurances are not binding. This suggests that the current obligations are not unduly onerous. The way in which UTV meets the current obligations means that viewers have a choice of late night news and current affairs programming from UTV and BBC Northern Ireland.
- 3.34 However, as indicated in the section 229 report, Ofcom recognises that the news and current affairs provision in the nations, where possible should be broadly equivalent. If adopted, the proposal to reduce UTV's non-news obligations to 90 minutes a week would be equivalent to the current (and proposed) non-news obligations for Wales, as well as the two licences for Scotland.
- 3.35 Ofcom seeks views on UTV's proposal to reduce the amount of non-news programming that UTV is required to provide in line with its proposals.

*Q3 Do you agree with UTV's proposal for non-news obligations should be reduced to 90 minutes a week? If not, what alternative would you propose and why?*

### **Scotland (excluding Border)**

- 3.36 STV did not propose any changes to its obligations, but did propose that the definition of peak time (currently 6pm to 10.30pm) be extended by half an hour to 11pm. We discuss this in section 5. With this proviso, STV has told us that it considers that the existing level of licence obligations will remain sustainable during the next licence period.<sup>32</sup>

### Ofcom's initial assessment

- 3.37 Ofcom considers that maintaining the current level of obligations, which are some way below the level of regional content currently delivered by STV, would help to safeguard a reasonable amount of regional content throughout the next licence period.

### *Impact assessment*

- 3.38 STV considers that the current level of obligations is sustainable, notwithstanding the unpredictability of the commercial environment in future. We consider this a reasonable assessment, given that STV's actual provision of regional content significantly exceeds its current requirements, enabling it to trim provision in the event of adverse commercial circumstances. We also consider that the amount of regional news and content which the STV licensees are required to provide adequately serves the interests of citizens and viewers in their licensed area and contributes to a plurality of providers in these areas. We therefore do not propose to make any amendments to the existing regional programming obligations in the STV North and STV Central licences.

*Q.4. Do you agree with the proposals by STV to maintain overall minutage for regional content in the northern and central licence areas of Scotland at 5 hours 30 minutes a week, as detailed in Annex 3? If not, what alternative would you propose, and why?*

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<sup>32</sup> Paragraph 6.15, section 229 report.

## Wales

- 3.39 ITV plc proposed no changes to the requirements for news and non-news programmes broadcast in Wales.<sup>33</sup>

### Ofcom's initial assessment

- 3.40 Following further discussion with the licensees, we consider that the ITV plc's proposal to retain the current levels of regional programming in Wales may represent a suitable means of meeting viewer needs in the next licence period.

### *Impact assessment*

- 3.41 ITV considers that the current level of obligations is sustainable. We also consider that the amount of regional news and non news content which the Wales licence is required to provide adequately serves the interests of citizens and viewers in their licensed area and contributes to a plurality of providers in these areas. It is equivalent to those regional programming obligations for viewers in Northern Ireland and those served by the STV held licences in Scotland. We therefore do not propose to make any amendments to the existing regional programming obligations in the Wales licence.

*Q.5 Do you agree with the proposals by ITV to maintain the overall minutage for regional content in Wales at 5 hours 30 minutes a week, as detailed in Annex 3? If not, what alternative would you propose, and why?*

## Channel Islands

- 3.42 ITV proposes that the Channel Islands should have a combined regional programming obligation (covering news, current affairs and other regional programming) of 3 hours 20 minutes in a typical week, instead of 4 hours at present. As part of this, ITV proposes to retain a full 30 minute early evening weekday bulletin of regional news, but 'to ensure a sustainable service'<sup>34</sup> to reduce minutage at other times of the day and at weekends along the lines summarised in paragraph 3.22 above.
- 3.43 Ofcom considers that these proposals reflect a reasonable balance between the demands of a news agenda driven by the specific geographical and constitutional circumstances of the Channel Islands, and the fact that the small size of the Channel Islands population compared to other Channel 3 regions significantly limits the amount of advertising revenue ITV can earn from this service.

*Q.6. Do you agree with the proposals by ITV to reduce the overall minutage for regional content in the Channel Islands from 4 hours a week to 3 hours 20 minutes as detailed in Annex 3, while maintaining the present provision of a 30 minute early*

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<sup>33</sup> These currently form part of the obligations under ITV's Wales and West licence. We are proposing to redraw the boundaries of this licence area, however, in order to create a new Wales only licence

<http://stakeholders.ofcom.org.uk/consultations/c3-licensed-area>

This will not affect the current regional programming obligations that apply in Wales which will be carried over into the new licence.

<sup>34</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/c3-c5-obligations/annexes/itvs-proposals.pdf>

*evening regional news programme? If not, what alternative would you propose, and why?*

*Q.7 Do you have any views on any other aspects of the nations and regions programming and production obligations of the Channel 3 licensees?*

## Section 4

# Regional programming options for the Border licence

## Introduction

- 4.1 The Border Channel 3 licence covers the area shown in Figure 4, which straddles the border between Scotland and England and comprises most of the administrative areas of the Scottish Borders, Dumfries and Galloway and most of Cumbria. Regional news arrangements for this area therefore need to take account of the particular interests of residents in both the Scottish and English parts of the licensed area.
- 4.2 This section summarises the current and previous arrangements for providing content relevant to residents of the Border region, sets out regional news provision in neighbouring licence areas and the proposals that ITV made to modify its current regional news obligations for Border for the purposes of the section 229 report. It then discusses the two options for regional programming obligations in the Border licence that we are putting forward for consultation.

**Figure 4: map of Border Channel 3 licence area**



## Regional programming obligations in Border to date

- 4.3 Before the changes made in 2009 to the structure of regional news arrangements in England (described in more detail in section 3), there was a dedicated 30 minute

early evening news programme for the region on Channel 3 ('Lookaround'), together with shorter regional news bulletins at weekday lunchtimes, late evenings and weekends. Following the consolidation of news regions in 2009, this was replaced by joint news arrangements for viewers in the Border and Tyne Tees licence areas, including the metropolitan centres of Newcastle and Gateshead, though with regional opt-outs in the weekday early and late evening news bulletins.

- 4.4 The specific obligations for regional programming in the Border licence are similar to those in the other English licences and currently include in a typical week:
- a) a minimum average of 4 hours per week of regional news and other regional content;
  - b) of this, the licence states that at least 2 hours shall be of particular interest to persons living in the Border licence area. A further 1 hour 45 minutes may be shared with the Tyne Tees licence area;
  - c) a minimum average of 2 hours 30 minutes of regional news to be broadcast in peak viewing hours;
  - d) a minimum average of 14 minutes of other regional content to be broadcast between 5pm and 11.30pm; and
  - e) a minimum proportion of regional programming to be made in the licensed area – in this case, 96%.
- 4.5 ITV currently meets these obligations with the following programming:
- a) a main weekday early evening, peak time bulletin of 30 minutes, shared with Tyne Tees, which includes a 15 minute segment focused on the Border region;
  - b) a late evening 8 minute bulletin just for the Border region; and
  - c) weekday lunchtime and weekend daily bulletins shared with Tyne Tees of 6 minutes 30 seconds and 10 minutes respectively.
- 4.6 As explained in paragraph 4.17, this regional programming is produced in ITV's regional hub in Gateshead, although news gathering continues to be carried out locally.

## **Regional programming obligations in the other Scottish and nations licence areas**

- 4.7 Channel 3 licences for the devolved nations (other than Border) and the Channel Islands require the provision of more regional news and non-news programming than the Channel 3 licences in England. This reflects the fact that there are separate political and constitutional arrangements in those nations, and the fact that UK news programmes include coverage of issues stemming from the political and constitutional arrangements in England.
- 4.8 In Scotland and Wales, Channel 3 licensees are required to provide 5 hours 30 minutes of regional programming, including 1 hour 30 minutes of non-news, a proportion of which must be current affairs. In Northern Ireland, UTV is required to provide 6 hours of regional programming, including 2 hours of non-news, although UTV propose to reduce this in line with the requirements applying in the other

devolved nations, as noted above. In the Channel Islands, ITV is required to provide 4 hours of regional programming, but is proposing to reduce this to 3 hours 20 minutes,

- 4.9 In the rest of Scotland (i.e. outside the Border region), the Channel 3 service is provided by two subsidiaries of STV – STV North and STV Central, serving northern and central Scotland respectively. Both of the STV licensees are required to produce 4 hours per week of regional news in a typical week. In addition, each licence has a specific sub-regional obligation, namely to broadcast 5 minutes of regional programming each week day at 6pm (or on average 25 minutes each week) devoted to the east and west of its central Scotland licence, and the north and south of its northern Scotland licence. The weekly average for non-news regional programming is 1h 30min, of which 33min must be current affairs. As set out in Section 3 of this consultation, STV has not made any proposal to reduce these obligations.
- 4.10 STV currently over-delivers on these obligations. STV Central broadcasts a 30 minute sub-regional news programme each weekday, where the licence obligation is for 5 minutes. In addition STV broadcasts *Scotland Tonight* four nights a week which typically delivers 80 minutes of current affairs compared to the licence requirement of 33 minutes.

## Ofcom's section 229 report and subsequent developments

- 4.11 In its submissions for the section 229 report, ITV proposed that the regional programming obligations in the Border licence should be amended so that it would be required to provide Border residents with 2 hours 30 minutes per week of regional news focussed on the Border region, rather than shared with viewers from Tyne Tees, and 15 minutes a week (average) of non-news regional programming. As set out in Section 3, ITV proposed to fulfil such amended obligations with a 20 minute early evening regional news bulletin and by halving the length of its existing lunchtime, late-evening and weekend regional bulletins.
- 4.12 In our section 229 report to the Secretary of State, we said that obligation levels for the devolved Nations (including the Scottish Border region) must take account of the specific need for plurality in news and current affairs content which enable viewers to engage fully in democratic processes. We said as a principle, that equivalent obligations should apply in Scotland, Wales and Northern Ireland.<sup>35</sup> Since, under ITV's original proposals, viewers in the Scottish part of the Border licence area would have access to much less news and current affairs about political affairs in Scotland than residents in other parts of the country, we suggested that it would be appropriate to examine the issues more closely in the run-up to the next licensing period.<sup>36</sup> In particular, we said that we would conduct further consumer research if asked to do so.
- 4.13 We also set out possible options that we considered might meet the aspirations of viewers in the south of Scotland for coverage of both regional and national matters:
- a) a dedicated regional service for viewers in the south of Scotland, supplemented with coverage of national Scottish issues. Under this scenario, viewers in the English Border region might continue to receive the existing Border / Tyne Tees service; or

<sup>35</sup> See paragraph 4.17 of the section 229 report.

<sup>36</sup> Figure 23 and paragraphs 5.15 to 2.20 of the section 229 report.

- b) an amendment to regional obligations in the Border region (either as a whole or only for viewers in the south of Scotland) to ensure Border's Scottish viewers received a level of news consistent with obligations in northern and central Scotland; or
- c) auctioning a new all-Scotland licence in place of the existing licences held by STV and the area of southern Scotland currently covered by the Border licence.

4.14 Ofcom was then asked by the Department of Culture, Media and Sport to carry out research into the preferences of Border viewers for regional news. While there was some support for more Scottish-based content, the main finding of the report, summarised in Figure 5 below, was that viewers in the Border region wanted to see the return of the dedicated Border regional news they had before 2009 rather than the status quo, or (for Scottish viewers) incorporation within STV's regional news arrangements.<sup>37</sup> The research findings chime with the qualitative and deliberative research commissioned separately by ITV.<sup>38</sup>

### Figure 5: Audience research on Channel 3 news in the Border region

Ofcom commissioned deliberative research from an independent agency in September 2012. The researchers undertook full-day sessions with participants in four locations in the Border region (Galashiels, Penrith, Stranraer and Dumfries) to investigate audience satisfaction with the current regional news provision on Channel 3 and specifically with ITV1's 6pm Lookaround bulletin.

In particular, the researchers were asked to explore what type of regional TV news service audiences would ideally like to receive and the importance that viewers in the south of Scotland placed on news coverage both of regional and wider Scottish issues.

The results of the deliberative research indicate that:

- viewers perceive the role of Channel 3 regional news to be the provision of interesting and relevant local and regional content. As such, the current programme received by viewers in the south of Scotland, which additionally serves Cumbria, Newcastle and the north east of England, is perceived as covering too large an area geographically. This is viewed as diluting the share of news relevant to viewers in the Border area.
- the equivalent BBC programme, which serves the whole of Scotland, is viewed as having a different role to Channel 3 – to provide news for and about the Scottish nation. The two services are therefore seen as complements, rather than substitutes.
- consequently, the lack of Scotland news received by viewers in the south of Scotland is not a key cause of dissatisfaction, which is derived more from a lack of coverage of their own region.
- respondents universally would prefer a return to a service covering a smaller area, in the belief it would lead to more coverage of each of the localities surveyed. Although a service aimed at both central and southern Scotland received some support, many expressed concerns that, in such a scenario, coverage would focus on the major population centres further north at the expense for news about their area.

<sup>37</sup> *ITV Border News – A research report for Ofcom*, October 2012, Essential Research (<http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/tv-border-news.pdf>)

<sup>38</sup> *ITV Regional News – Territories & Timing*, ITV, November 2012

<http://stakeholders.ofcom.org.uk/binaries/consultations/c3-c5-obligations/annexes/ITV-Regional-news.pdf>

- 4.15 Responding to Ofcom's section 229 report and the consumer research, the Secretary of State noted that ITV's proposals would mean that viewers in the Scottish Borders region would not receive the same level of reporting about Scotland as viewers in other parts. She also noted that the research demonstrated the particular value viewers in the Border region placed upon news about their own area. She said that she regarded the quality and plurality of news provision to be of the utmost importance, and looked to Ofcom to find a way forward with ITV plc that addressed these concerns.<sup>39</sup>

## ITV's revised proposals

- 4.16 Following the observations of the Secretary of State and further discussions with Ofcom, ITV has revised its proposals for regional programming in the Border licence area as follows:
- a) in place of the original proposal for 20 minutes of news within the early evening news bulletins of particular interest to Border residents, ITV now proposes a 30 minute early evening regional news bulletin focused on the Border region. While the make-up of bulletins would depend on what was newsworthy, ITV says that it would be reasonable to assume that on a typical night, at least 10 of the 30 minutes would come from Scotland, roughly reflecting the population spread across the licence area; and
  - b) an additional half hour of regional current affairs and political programme per week, with two thirds to three quarters focused on southern Scotland, and reflecting the political debate in Scotland in particular. This would run for 40 weeks of the year at 10.35pm on a weeknight, with a repeat during the week. Special programmes could be scheduled to address big events such as the independence referendum or Scottish general elections. ITV says it would recruit a new ITV Border Political Editor to present the programme and contribute to Borders' regional news programmes.<sup>40</sup>
- 4.17 While newsgathering and the compilation of reports would take place within the Border region, regional programmes for the Border licence area would continue to be produced from the regional hub in Gateshead.

## The regional programming options for consideration in the Border area

- 4.18 In the light of ITV's revised proposals, we have identified two options for regional programming in the Border area on which we are inviting views. In formulating these options, we have taken into account the following considerations:
- a) the preference expressed by viewers in both the Scottish and English parts of the Border region for regional news focused on their area rather than one skewed by the news agenda in neighbouring regions, whether the northern eastern metropolitan region of England or the central belt of Scotland;

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<sup>39</sup> Letter from Secretary of State for Culture, Media and Sports to Chief Executive, Ofcom, 16 November 2012

([http://www.culture.gov.uk/images/publications/Maria\\_Miller\\_letter\\_to\\_ed\\_richards.pdf](http://www.culture.gov.uk/images/publications/Maria_Miller_letter_to_ed_richards.pdf))

<sup>40</sup> *ITV's proposals for nations and regions news for a new Channel 3 licence*, February 2013, ITV <http://stakeholders.ofcom.org.uk/binaries/consultations/c3-c5-obligations/annexes/itvs-proposals.pdf>

- b) the importance of serving the needs of citizens in the Borders for plurality in news and current affairs content, that enables them to engage fully in democratic processes. In our view, this consideration should be given particular weight because of the different constitutional arrangements that apply on either side of the border, and the forthcoming independence referendum in Scotland;
- c) the principle that there should be equivalent regional obligations in each of the nations of Scotland (including the Scottish part of the Border licence), Wales and Northern Ireland;
- d) the need to balance the importance of plurality in regional news and current affairs with viewers' interest in other networked programming that expanded provision of news and current affairs might replace; and
- e) the costs of meeting more onerous obligations in relation to the provision of regional news and current affairs in an area which is one of the more sparsely populated parts of the UK.

4.19 Both options we have identified entail modifications to the current regional programming obligations in the Border licence. We have not pursued the option identified in the section 229 report of auctioning a new all-Scotland licence in place of the existing licences held by STV and the area of southern Scotland currently served by ITV. We do not consider that the disruption this could result in for both viewers and licensees would be likely to be proportionate, given

- a) our findings in the section 229 report on the sustainability of the existing Channel 3 licences and the ability of the licensees to contribute to PSB purposes;
- b) the enhanced level of Scottish programming that STV is providing in its area over and above its licence obligations; and
- c) the proposals made by ITV to enhance its coverage of Scottish issues in the Border region and the research findings set out above,

### **Option 1**

4.20 This option would comprise ITV's current proposals (explained in more detail in paragraph 4.16 above) for a dedicated Border news service, whose main early evening news bulletin would comprise 30 minutes of news of specific interest to Border viewers, with appropriate coverage of Scottish issues, and a weekly half hour regional current affairs and politics programme for the whole of the Border region and specific to the region, with two thirds to three quarters of the programme focused on southern Scotland, and reflecting the political debate in Scotland in particular.

### **Option 2**

4.21 This option would comprise the enhanced regional news service described in Option 1, but in place of a 30 minute current affairs programme which must be specific to the Border region, ITV would be required to provide 90 minutes of non-news regional programming (including current affairs) a week, in or near peak-time. This would still have to be of relevance to viewers in the Border region, but this programming could be produced in conjunction with the other Scottish Channel 3 licensees. This would allow ITV to make its own regional current affairs programme (which might be scheduled, for example, after the late evening Border news bulletin) or to reach a commercial agreement with STV to show its current affairs programme, *Scotland*

*Tonight* (which currently runs from Monday to Thursday). It is important to note that the decision as to whether to broadcast bespoke programming for Border or to share programming with STV would be a commercial one for ITV and STV, and not one that Ofcom could dictate in the licence for either Border or STV.

- 4.22 If ITV were to opt for scheduling *Scotland Tonight* in order to fulfil an extended regional current affairs programming obligation (or for making Scotland based programming of its own), it may not attract viewers south of the border because of the wider Scottish focus of the programme. In these circumstances, it might be appropriate to require ITV to split the Border digital terrestrial transmission between the English and Scottish portions (effectively creating sub-regions), so that viewers in England would see programming shown on the rest of the ITV network, rather than programmes principally concerning current affairs in Scotland. As the requirements of the PSB licence relate to DTT provision only, it would be a matter for ITV to decide whether it wished to do the same for its simulcast satellite transmissions.

### Impact assessment

- 4.23 ITV has pointed out the Border region has one of the smallest populations of any Channel 3 region at around 614,000 'TV' individuals - only the population of the Channel Islands region is smaller (about 154,000 people). As noted in the section 229 report, ITV has said that it already spends more on a per capita basis in Border than it does in any other region of the UK where it holds a licence.<sup>41</sup> ITV has provided Ofcom with confidential cost data, showing that under both options, its costs of meeting its regional programming obligations in Border would increase further and would result in ITV spending substantially more on regional news per head than for any English region. While ITV has said that it would be willing to provide regional programming as set out under Option 1, it has suggested that Option 2 would be disproportionately expensive.
- 4.24 Ofcom's initial assessment is that Option 1 would meet the demand of viewers in Border for programming focused on their area. In addition, it has the potential to offer an alternative source of more in depth coverage of relevant political issues in Scotland in the proposed weekly current affairs programmes, while doing so in a way that reflected the particular interests of viewers in southern Scotland. The programme would also provide more regionally specific current affairs coverage in the Border region than elsewhere in England but less than in the rest of Scotland, as well as Wales and Northern Ireland. It would only have a limited impact on those viewers who were less interested in current affairs and preferred to see networked programming after the late news. We note that ITV would be prepared to bear the cost of this option, so have assumed that it would be sustainable for the duration of the next licence.
- 4.25 Option 2, like Option 1, would meet the demand of viewers in Border for programming focused on their area through the 30 minute regional news bulletin. The 90 minutes of regional current affairs per week has potential to enhance significantly the coverage of Scottish current affairs for Scottish residents of the Border region and make a positive contribution to plurality in that regard. The obligations as a whole would secure equivalence with the current affairs obligations that apply to licensees serving Scotland and Wales, and which UTV has asked should apply in Northern Ireland. The additional programming could be produced in-house, or sourced from STV, by commercial agreement. For example, there could be scope to retransmit *Scotland Tonight* in the Borders.

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<sup>41</sup> Paragraph 5.8 of the section 229 report.

- 4.26 However, the programmes may be less relevant to viewers in southern Scotland compared to option 1, if they relate to the whole of Scotland, rather than the Border region. Such programmes may also fail to attract viewers south of the border. Depending on whether regional programming was produced in house or sourced from STV, the cost of Option 2 could be equivalent to or cheaper than Option 1. However, the variant of this which would split the Border digital terrestrial transmission between the English and Scottish portions, so that viewers in England could see networked programming, may increase the cost materially.

*Q.8. Which option would you prefer in respect of the news and current affairs in the Border region, and why?*

*Q.9 If option 2 were to be adopted, should ITV be required to provide separate transmission for the Scottish and English parts of the region on DTT?*

*Q.10. If you would prefer a different option to those set out in Questions 8 and 9 above, please explain what, and why.*

## Regional production requirements

- 4.27 Each of the Channel 3 licences provides for a large proportion of regional content to be produced within the licensed area, generally 99% (see paragraph 3.9 above). This is in line with the statutory requirement that the licences include a condition to secure that a significant proportion of regional programming is made in the licence area. From 2009, in order that regional news provision could be sustained, licensees were allowed to aggregate many aspects of production in regional hubs, though newsgathering continues to be carried out locally<sup>42</sup>. However, with the exception of Border, all licence areas include a regional hub, so there is no obstacle to complying with the existing requirement.
- 4.28 In the case of Border, while news gathering is carried out locally, news programmes are compiled and broadcast from the regional hub at Gateshead in the Tyne Tees licence area. This is not currently reflected in the regional production requirement in the Border licence, which requires that 90% of regional programming broadcast by time is made in the licensed area. We have therefore considered whether this should be modified.
- 4.29 As Ofcom explained in the second PSB review, we consider the physical location of production centres is less important than local news gathering.<sup>43</sup> Clearly, news gathering and the production of local packages for insertion in regional programmes are essential components of the production process, and contribute more to the regional focus of the content than other aspects of the production process carried out in the studio. Indeed, if ITV had to establish a regional production hub for a licence area serving a relatively small population, this would be likely to significantly reduce the resources that could be devoted to local newsgathering, and could have a detrimental effect on the service made available to viewers.

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<sup>42</sup> Paragraph 7.9, *Ofcom's second public service broadcasting review – Phase Two: preparing for the digital future*, Ofcom, September 2008

[http://stakeholders.ofcom.org.uk/binaries/consultations/psb2\\_phase2/statement/psb2statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/psb2_phase2/statement/psb2statement.pdf)

<sup>43</sup> Paragraph A1.31, *Ofcom's Second Public Service Broadcasting Review – Phase 2: preparing for the digital future*,

- 4.30 Accordingly, we propose to amend the Border licence to reduce to an appropriate and sustainable level the proportion of regional production required, taking account of the costs of provision and the statutory requirement for regional production.

*Q.11 Do you agree that the Border licence should be amended to reduce the proportion of regional production required to a sustainable level? If not, what proposals would you like to make?*

## Section 5

# Definition of peak-time viewing

## Introduction

5.1 This section:

- a) summarises a proposal by STV and UTV to extend the definition of peak-time from the current 6.30 to 10.30pm, to run from 6.30pm to 11pm, to make it easier for them to meet obligations to schedule regional programming in peak without conflicting with networked programmes popular with viewers;
- b) explains that each of the commercial PSB licensees (Channels 3, 4 and 5) have programming and production obligations that must be met in peak time, so that a change to the definition could have wider repercussions;
- c) provides background information on viewing patterns;
- d) explains that Ofcom would like to find out more about the potential implications before deciding whether or not to consult on possible changes to the definition of peak time, and seeks views from interested parties.

## The definition of peak time

5.2 Since the Channel 3 licences were last awarded in 1991, the peak viewing time for each of the PSB channels has been defined as 6pm to 10.30pm.<sup>44</sup> Ofcom sets obligations in the PSBs to show a certain amount of news, current affairs and original programming during that period.<sup>45</sup> In relation to regional content on Channel 3, in some cases we also set obligations for the periods immediately preceding and following peak viewing time – these are known as ‘near peak’ or ‘shoulder peak’ periods.

5.3 A different definition of peak-viewing time applies to rules on how much advertising can be shown. Since 1998, the PSBs have been subject to specific restrictions on the amount of advertising they can carry between 6pm to 11pm.<sup>46</sup>

## Proposals for amendments to definition of peak time programming

5.4 UTV and STV have proposed that peak time should be extended to run from 6pm to 11pm, so that they could meet some of their regional peak-time obligations by showing programmes between 10.30pm and 11pm.

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<sup>44</sup> The Act gives Ofcom the flexibility, if desired, to set the peak period differently for each of the commercial PSB services. The BBC has determined peak time for BBC Three and BBC Four to run from 7pm to midnight, as they do not start broadcasting until 7pm.

<sup>45</sup> Additionally, party election broadcasts on television on behalf of ‘major parties’ throughout Great Britain must be carried in peak time, as must PEBs on Channel 3 in the relevant nations on behalf of the SNP, Plaid Cymru and the major Northern Ireland parties. Referendum campaign broadcasts on behalf of designated organisations must also be scheduled in peak time.

<sup>46</sup> See *Code on the Scheduling of Television Advertising* at <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>.

- 5.5 STV noted that extending peak time to 11pm would bring the programming definition in line with the television advertising rules. It argued that its flexibility to schedule regional programming at present was curtailed for a number of reasons. These include the amount of weekday peak programming already given over to news content and the expectations on viewers that certain programme slots would be filled with new dramatic content, including long running series. For these reasons, it was extremely difficult to deviate from the network schedule in order to run regional content.
- 5.6 UTV pointed out that other definitions of peak are used elsewhere in the European Union – for example, the Broadcasting Authority of Ireland defines peak time as 6pm to 11.30pm. Although UTV stated that it did not feel strong how peak time should be defined, supporting either 6pm to 11.30pm or 5pm to 11pm as a definition of peak, UTV argued that an extension was necessary as it was becoming increasingly difficult to find peak-time slots to opt out of the network schedule in order to broadcast its regional programming.
- 5.7 UTV said that it received a significant audience for regional programmes scheduled at 10.30pm. UTV outperformed the network at this time, averaging a 16.2% share of total television audience viewing compared to the Channel 3 average of 9.3% for the same slot. Consequently, it should not be perceived as a low value slot with low audiences, at least insofar as Northern Ireland was concerned.
- 5.8 UTV said that it would like to make regular use of the late evening slot from 10.30pm for regional content. In the event that the peak viewing period was extended to 11pm, it would commit to retaining its late evening regional current affairs programme for at least the first five years of a new licence period, at the current level of 2 hours of non-news programming even if the obligation were reduced to 1 hour 30.

## Additional considerations

- 5.9 The 2003 Act requires that, for a number of PSB obligations, quotas are set for peak viewing times. For example, in setting the requirement for news and current affairs, Ofcom must make provision for the broadcasting of such programming to be split between peak and other times.<sup>47</sup> In these cases, Ofcom may set individual peak periods for each of the PSB channels. In addition, in the case of the regional programming obligations of the Channel 3 licences, Ofcom may set individual peak periods for each of the licensees.<sup>48</sup> Our approach to date, however, has been to have the same peak period across the licensed PSB channels and the Channel 3 licensees.
- 5.10 Our view has been that, even if there are slight differences in viewing patterns in different Channel 3 licence areas, it is unlikely to be appropriate to adopt separate definitions given the fact that Channel 3 is intended to be a generally networked service. Adopting different peak time definitions for different parts of the network could make scheduling difficult, limit the access of viewers to some networked programming, and discriminate against those licensees who did not benefit from more relaxed (and commercially beneficial) definitions.
- 5.11 We note the present intention of STV and UTV to continue to offer content during an extended peak in weekdays, in addition to the licence obligations that they are currently over-delivering which is of particular interest to people in those regions.

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<sup>47</sup> Section 279(3) of the 2003 Act

<sup>48</sup> Section 287(8) of the 2003 Act.

However, it is possible that a change could have other consequences that might adversely affect viewers.

- 5.12 In the event that we chose to extend the defined peak viewing period for all licensees until 11pm, it would be open to the PSBs to move national peak-time news bulletins to 10.30pm. It is possible that such changes could reduce the reach and impact of the programming which we regard as a key element of PSB provision. For example, on both occasions that a Channel 3 network news programme has moved from 10pm to later points in the schedule, the number of viewers watching that bulletin declined.<sup>49</sup>
- 5.13 Further, a change in the peak period could place an additional burden on PSBs by increasing the amount of content they would be required to show in order to meet their peak time production obligations. Channel 5, for example, would be required to show significantly more original content each year in order to continue to meet an unchanged peak-time quota, potentially leading to it to reduce its average spend per programme in the absence of an increased commissioning budget.
- 5.14 As noted, however, we could set a different peak period for the regional programming obligations of the Channel 3 licensees to that which applies for other PSB obligations. Alternatively, we could set individual peak periods for each of the Channel 3 licensees for their respective regional programming obligations, as proposed by UTV and STV. That would avoid the difficulties set out in paragraphs 5.12 – 5.13 above. It would enable the licensees to move their regional news bulletins to later in the schedule but may reduce the reach and impact of the programming (as the evidence from changes in the national news scheduling might suggest.)
- 5.15 Furthermore, in order to pursue this option, we would need to ascertain whether it would cause scheduling difficulties for the Channel 3 licensees in relation to network programming and, in particular, make it harder for them to deliver their other peak time PSB obligations.
- 5.16 In addition, any changes to peak obligations would, in all likelihood, necessitate changes to the ‘shoulder peak’ obligations placed on some regional Channel 3 licensees.<sup>50</sup> For example, in Wales, ITV plc must broadcast 30 minutes of content of particular interest to Welsh viewers each week during the periods 5pm to 6pm and 10.30pm to 11.30pm. Without amendment, extending peak time could either curtail the flexibility of the licensees to meet their shoulder peak obligations (if the period of shoulder peak time is simply reduced to half an hour) or could have an impact on the ability of viewers to access this content, if the shoulder-peak is time-shifted to very late in the evening.

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<sup>49</sup> In March 1999, Channel 3 replaced its 10pm bulletin with one beginning at 11pm, with viewing falling from 5.7m in the twelve months prior to the change to 3.2m in the twelve months after. In February 2004, Channel 3 replaced a news bulletin which ran at 10pm on at least three weeknights with a programme at 10.30pm every weeknight, with another overall decline in viewing. It is worth noting, however, that the Channel 3 licensees are able to meet their current UK peak news obligations without the 10pm news bulletin.

<sup>50</sup> Section 287 of the 2003 Act requires that a suitable proportion of regional programmes appear at peak viewing times and at times immediately preceding or following these times. It is these latter periods which are referred to as “shoulder peak”.

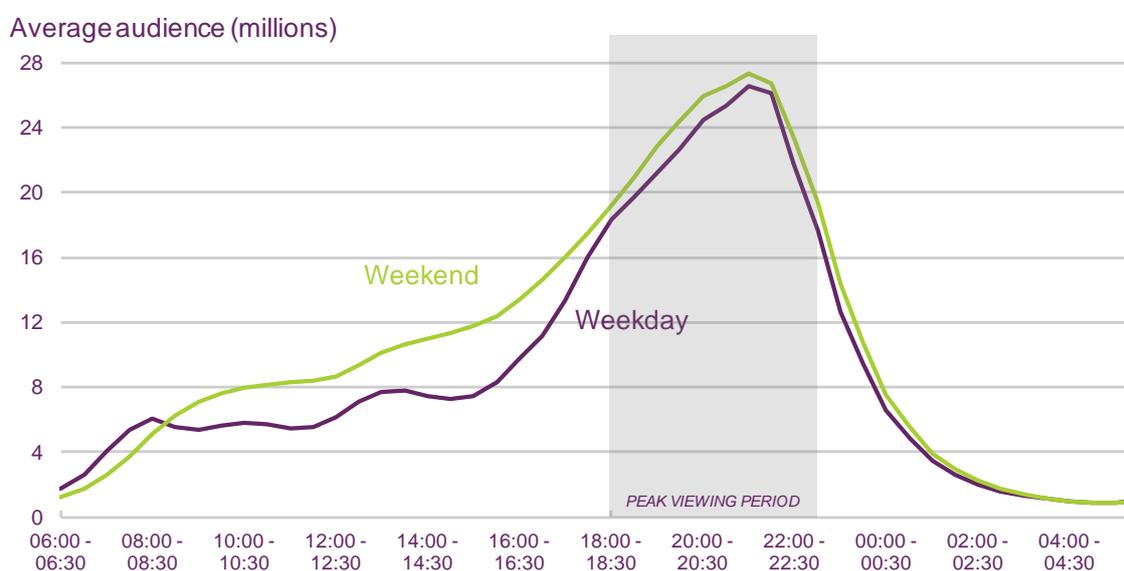
## Viewing patterns in and around peak time

5.17 As part of our assessment of obligations ahead of licence renewal, and in order to assess the impact of the request by STV and UTV, we have updated our analysis of television viewing patterns, on the PSB channels funded by advertising in particular, and examined other possible consequences of an extension to the peak period.

### Television viewing during peak periods

5.18 As shown in Figure 6 below, overall television audiences tend to be larger at the weekends, with a more gradual increase in audience viewing throughout the day than is typically seen on weekdays. On both weekdays and weekends, however, total viewing drops sharply from a peak around 27 million between 9pm to 9.30pm, falling below 5 million by 1 am.

**Figure 6: Average television audiences in 2012**

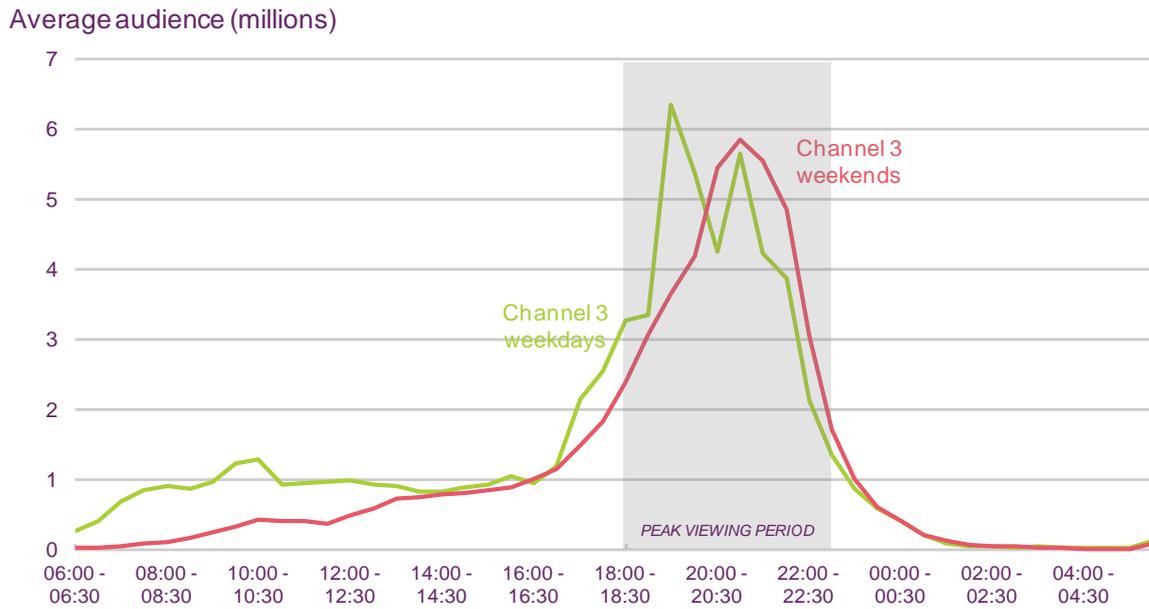


Source: BARB

5.19 Despite the rapidity of the decline, total viewing volume between 10.30pm and 11pm, i.e. outside the current definition of peak viewing, is comparable to that of the total audience between 6pm to 6.30pm at the start of the peak period. On average 18.3m viewers watch live television between 6pm and 6.30pm on weekdays (19.2m on weekends), compared to 17.7m watching between 10.30pm and 11pm on weekdays (19.3m on weekends).

5.20 On a channel by channel basis, however, different viewing patterns emerge. In broad terms, although Channel 3 follows a similar pattern to the overall trend, viewing climbs at a steeper rate earlier in the evening and declines more sharply from 10pm. Consequently, the number of people watching Channel 3 between 6pm and 6.30pm is significantly higher (with 3.3m on weekdays when regional news programmes are shown across the network and 2.4m on weekends) than between 10.30pm and 11pm (1.4m viewers on weekdays and 1.7m on weekends) – see figure 7 below.

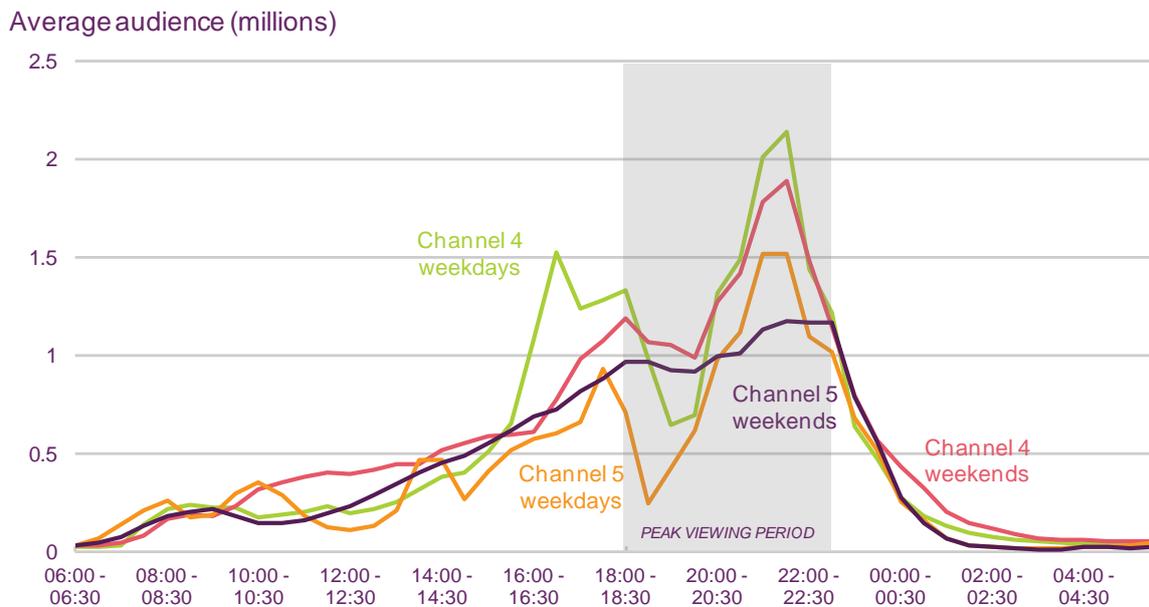
**Figure 7: Channel 3 audiences in 2012**



Source: BARB

5.21 Viewing levels also rise from a low base in the case of both Channel 4 and Channel 5, although some of the most popular programming on both channels (such as *Deal or No Deal* and *Neighbours*) is shown before the peak period. On both channels viewing falls during peak when news bulletins are broadcast, before rising to their highest levels between 9.30pm and 10pm. Between 10.30pm and 11pm, Channel 4 viewing is generally slightly lower than between 6pm and 6.30pm whereas Channel 5's audience is notably higher – see figure 8 below.

**Figure 8: Channel 4 and Channel 5 audiences in 2012**



Source: BARB

5.22 In the light of the evidence of viewing trends set out in Figures 6, 7 and 8 and the issues we have identified in relation to a change to the definition of peak, we are inviting views generally on the issue and any information that stakeholders may be

able to provide on the potential ramifications, in order to be in a better position to assess whether to put forward for consultation an alternative approach and if so, the scope and nature of any such revised definition.

*Q.12 What views do you have on the proposal by STV and UTV to extend peak time to 11pm, which would extend the window in which they could schedule regional content that must be shown in peak time?*

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 2 May 2013**
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/c3-c5-obligations/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (reproduced at the end of this Annex), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [3and5relicensing@ofcom.org.uk](mailto:3and5relicensing@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation.
- Oli Bird  
Content, Consumer and External Affairs  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 2. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Publication of consultation responses

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt.
- A1.8 If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other

contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

## **Ofcom's consultation principles**

- A1.11 Ofcom has published the following seven principles that it will follow for each public written consultation:

### **Before the consultation**

- A1.12 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. 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**

- A1.13 We will be clear about who we are consulting, why, on what questions and for how long.
- A1.14 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 to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A1.15 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A1.16 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
- A1.17 If we are not able to follow one of these principles, we will explain why.

### **After the consultation**

- A1.18 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Next steps

- A1.19 Following the end of the consultation period, Ofcom intends to publish a statement in July 2013.
- A1.20 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A1.21 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.22 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.23 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email: [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Further information

- A1.24 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Kathleen Stewart on 020 7981 4293.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Channel 3 and Channel 5: proposed programming obligations

To (Ofcom contact): Kathleen Stewart

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)

## Annex 2

# Consultation questions

*Q1 Do you agree that the existing obligations on Channel 3 and Channel 5 licensees in respect of national and international news and current affairs, original productions, and Out of London productions should be maintained at their current levels? If not, what levels do you consider appropriate, and why?*

*Q2 Do you agree with ITV's proposals for changes to its regional news arrangements in England, including an increase in the number of news regions in order to provide a more localised service, coupled with a reduction in overall news minutage?*

*Q3 Do you agree with UTV's proposal for non-news obligations should be reduced to 90 minutes a week? If not, what alternative would you propose and why?*

*Q4. Do you agree with the proposals by STV to maintain overall minutage for regional content in the northern and central licence areas of Scotland at 5 hours 30 minutes a week, as detailed in Annex 3? If not, what alternative would you propose, and why?*

*Q5 Do you agree with the proposals by ITV to maintain the overall minutage for regional content in Wales at 5 hours 30 minutes a week, as detailed in Annex 3? If not, what alternative would you propose, and why?*

*Q6. Do you agree with the proposals by ITV to reduce the overall minutage for regional content in the Channel Islands from 4 hours a week to 3 hours 20 minutes as detailed in Annex 3, while maintaining the present provision of a 30 minute early evening regional news programme? If not, what alternative would you propose, and why?*

*Q7 Do you have any views on any other aspects of the nations and regions programming and production obligations of the Channel 3 licensees?*

*Q8. Which option would you prefer in respect of the news and current affairs in the Border region, and why?*

*Q9 If option 2 were to be adopted, should ITV be required to provide separate transmission for the Scottish and English parts of the region on DTT?*

*Q10. If you would prefer a different option to those set out in Questions 8 and 9 above, please explain what, and why*

*Q11 Do you agree that the Border licence should be amended to reduce the proportion of regional production required to a sustainable level? If not, what proposals would you like to make?*

*Q12 What views do you have on the proposal by STV and UTV to extend peak time to 11pm, which would extend the window in which they could schedule regional content that must be shown in peak time?*

## Annex 3

## Regional programming: current and proposed licence obligations

Region (Licensee)	Obligation	Current Quota	Proposed Quota
Wales (ITV Wales)	Regional requirements (average weekly hours)	News 4:00 Other 1:30 (of which current affairs is 00:47) Total 5:30	No change
	Regional news in peak	2 hours and 30 minutes	No change
	Peak non-news	45 minutes	No change
	5pm to 11:30 pm	At least 14 minutes of programmes other than news	No change
	Regional production	99% produced in the licensed area.	No change
Northern Ireland (UTV)	Regional requirements (average weekly hours)	News 4:00 Other 2:00 (if which current affairs is 00:26) Total 6:00	News 4:00 Other 1:30 Total 5:30
	Regional news in peak	2 hours 30 minutes	No change
	Peak non-news	45 minutes	No change
	Between 5pm to 6 pm and 10:30 to 11:30 pm	30 minutes	No change
	Regional production	90% produced within the licensed area.	No change.
Central Scotland (STV Central)	Regional requirements (average weekly hours)	News 4:00 Other 1:30 (of which current affairs 0:33) Total 5:30	No change
	Regional news in peak	2 hours 30 minutes	No change
	Non-news peak	45 minutes	No change
	Between 5pm – 6pm and 10:30 to 11:30 pm	30 minutes	No change
	6pm each weekday	5 minutes of regional programmes within the East and West sub-regions	No change
	Regional production	90% of regional programmes made within the licensed area.	No change
Northern	Regional	News 4:00	No change

<b>Scotland (STV North)</b>	requirements (average weekly hours)	Other 1:30 (of which current affairs 0:33) Total 5:30	
	Regional news in peak	2 hours 30 minutes	No change
	Between 5pm and 11:30 pm	30 minutes	No change
	6pm each weekday	5 minutes of regional programmes within the North and South and sub-regions	No change
	Regional production	70% of regional programmes made within the licensed area.	No change
<b>Channel Islands (Channel TV)</b>	Regional requirements (average weekly hours)	Regional News 3:09 Current Affairs 0:22 Other 0:29 Total 4:00	Total commitment of 3hrs 20 for news, current affairs and non-news. Breakdown to be confirmed
	Regional news in peak	1 hour 40 minutes per week	2 hours 30 minutes per week
	Between 5pm and 11:30 pm	49 minutes of regional programmes other than news	To be confirmed
	Regional production	99% of all regional programming made within the licensed area	99% of all regional programming made within the licensed area
<b>All English Regions: with the exception of Border.<sup>51</sup></b>	Regional requirements (average weekly hours)	News 3:45  Other 0:15  Total 4:00	News 2:30  Other 0:15  Total 2:45
	Regional news in peak weekly average <sup>52</sup>	2 hours 15	1 hour 40
<b>Borders (Border TV)</b>	Regional Programmes (weekly average)	News 3:45 Other 00:15 Total 4:00  (non news material can be delivered in programmes that otherwise consist of news) At least 2 hours of news programming to be of particular interests to those	News 3:20 Other 0:15 Total 3:35  All regional ITV News programmes in ITV Border will be regionalised for Border

<sup>51</sup> East of England (Anglia TV), North East England (Tyne Tees), North West England and Isle of Man (Granada), East and West Midlands (Central TV), Yorkshire (ITV Yorkshire), London (ITV London Weekday and Weekend), South and South East of England (ITV Meridian), South West of England (ITV Westcountry), West sub-region.

<sup>52</sup> Non-news programming obligation is currently 15 minutes per week, of which 14 minutes is to be scheduled between 5pm and 11:30pm and may be part of programming that otherwise consists of news. There is no change to this commitment proposed for all the English regions.

		living in the Licensed area broadcast on weekdays. A weekly average of 1 hour 45 minutes of news programmes shared with Tyne Tees Region.	
	Regional News in Peak	2 hours 15 minutes	2 hours 30
<b>Sub regional commitments</b>			
East of England	Sub-region commitment <sup>53</sup>	The Licensee shall include in the East and West sub-regions a weekly (weekday) average of 1 hour 15 minutes (1 hour 4 minutes annual average to account for holidays)	All news will be sub-regionalised for the East and West sub-regions.
North East England (Tyne Tees TV)	Sub-region commitment	Weekly weekday average of at least 2 hours of news programmes of particular interest to those living in the Licensed Area  Weekly average of at least 1 hour 45 minutes shared with ITV Border region	All ITV news in ITV Tyne Tees will be fully regionalised.
East and West Midlands (Central TV)	Sub-region commitment	Each of the East and West sub-regions and the sub-region served by the Oxford transmitter (and associated relays) have a weekly average of 1 hours 15 minutes.	All news will be sub-regionalised for the East and West sub-regions.
Yorkshire (ITV Yorkshire)	Sub-region commitment	Shall include in the Licensed service in each of the West (Emley transmitter) and East (Belmont transmitter) 1 hour and 15 minutes of news of interest to persons living in these sub-regions	All news will be sub-regionalised for the North and South sub-regions.
South and South East of England and the Thames Valley (ITV Meridian)	Sub-region commitment	Shall include in the West and East sub-regions at least 2 hours of news of particular interest to persons living in that respective area.  News programmes in the Meridian West sub-region may be shared with the sub-region of the ITV Central	All news will be sub-regionalised for the South and East sub-regions.  Thames Valley sub-region will have a 10 minute opt specific for that region, delivered within the main news bulletins from the

<sup>53</sup> Where the ITV proposal states that all news for that region will be sub-regionalised, it should be noted that ITV has also stated *“In rare and exceptional cases a whole programme might be shared across the whole of the region when the topics being covered are relevant everywhere”*

		service that is served by the Oxford transmitter and sub-relays.	South sub-region
South West of England (ITV Westcountry)	Regional Programming	At least 2 hours of news programmes must be of particular interest to persons living within the Licensed Area  1 hour 45 minutes of news programmes may be shared with ITV West region	All news will be sub-regionalised for the Westcountry region.
West <sup>54</sup>	Regional Programming	At least 2 hours of news programmes must be of particular interest to persons living within the Licensed Area  1 hour 45 minutes of news programmes may be shared with ITV South West region	All news will be sub-regionalised West sub-regions

<sup>54</sup> This region is currently part of the ITV West and Wales region. Subject to the outcome of a separate consultation, it may be removed from the Wales licence and attached to the South West of England licence.

**Annex 4**

# Channel 3 licensees' regional and local programming: current and proposed provision

\* Note: We refer to “regional” programmes when they relate to the whole of a licensed area and “local” when they relate only to a part of the licensed area.

Region (Licensee)	Time	Current provision	Proposed provision
<b>WALES</b>			
Wales (ITV Wales)	Lunchtime	6½ minute bulletin	See note <sup>55</sup>
	Evening	30 minute news programme	30 minute news programme
	Late Evening	8 minute bulletin	See note
	Sat / Sun	10 minutes each day	See note
<b>NORTHERN IRELAND</b>			
Northern Ireland (UTV)	Lunchtime	6 minutes	6 minutes
	Evening	30 minute news programme, plus 1 minute bulletins	30 minute news programme
	Late Evening	30 minute regional current affairs programme	30 minute regional current affairs programme <sup>56</sup>
	Sat / Sun	10 minutes each day	10 minutes each day
<b>SCOTLAND (EXCLUDING BORDER)</b>			
Central Scotland (STV Central)	Lunchtime	10 minutes	10 minutes
	Evening	30 minute regional news programme, with 5 minute local opt-outs for the East and West of the area	30 minute regional news programme, with 5 minute local opt-outs for the East and West of the area
	Late Evening	30 minute regional current affairs programme	30 minute regional current affairs programme
	Sat / Sun	10 minutes each day	10 minutes each day
Northern	Lunchtime	10 minutes	10 minutes

<sup>55</sup> Programming commitments to remain the same, however the exact schedule is yet to be same.

<sup>56</sup> Although UTV have proposed to reduce the non-new programming by half an hour in their obligations, the company has indicated that it does not intend to make immediate changes to the current output

<b>Scotland (STV North)</b>	Evening	30 minute regional news programme	30 minute regional news programme
	Late Evening	30 minute regional current affairs programme	30 minute regional current affairs programme
	Sat / Sun	10 minutes each day	10 minutes each day
<b>CHANNEL ISLANDS</b>			
<b>Channel Islands (Channel TV)</b>	Lunchtime	6½ minute bulletin	3 minute bulletin
	Evening	30 minute regional news programme	30 minute regional news programme
	Late Evening	8 minute bulletin	5 minute bulletin
	Sat / Sun	10 minutes each day	5 minutes each day
<b>ENGLISH REGIONS (INCLUDING BORDER)</b>			
<b>East of England (ITV Anglia)</b>	Lunchtime	6½ minute bulletin for whole region	Separate local bulletins: East: 3 minutes West: 3 minutes
	Evening	Single 30 minute news programme for the whole region, with 6 minute local opt outs for each of the East & West parts of the region	Separate programmes: East: 20 minutes of local news in 30 minute programme West: 20 minutes of local news in 30 minute programme
	Late Evening	Separate local bulletins: East: 8 minutes West: 8 minutes	Separate local bulletins: East: 5 minutes West: 5 minutes
	Sat / Sun	10 minute bulletins for the whole region on each day	Separate local bulletins: East: 5 minutes each day West: 5 minutes each day
<b>Borders (ITV Border) – see section 4 for further details</b>	Lunchtime	6½ minute bulletin, shared with Tyne Tees	3 minute news bulletin just for Border
	Evening	Single 30 minute regional news programme shared with Tyne Tees, but with a 15 minute opt-out for Border	30 minutes of regional news just for Border with at least 10 minutes devoted to news about Scotland
	Late Evening	8 minute bulletin just for Border	5 minute news bulletin just for Border
	Sat / Sun	10 minute bulletin on each day, shared with Tyne Tees	5 minute news bulletin on each day, just for Border
<b>North East England (ITV Tyne Tees)</b>	Lunchtime	6½ minute bulletin, shared with Border	3 minute news bulletin just for Tyne Tees
	Evening	Single 30 minute regional news programme shared with Border, but with a 15 minute opt-out for Tyne Tees	20 minutes of regional news for Tyne Tees within a 30 minute programme
	Late Evening	8 minute bulletin just for Tyne Tees	5 minute news bulletin just for Tyne Tees
	Sat / Sun	10 minute bulletin on each day, shared with Border	5 minute news bulletin on each day, just for Tyne Tees
<b>North West</b>	Lunchtime	6½ minute bulletin	3 minute bulletin

<b>England and the Isle of Man (ITV Granada)</b>	Evening	30 minute regional news programme	20 minutes of regional news in 30 minute programme
	Late Evening	8 minute bulletin	5 minute bulletin
	Sat / Sun	10 minute bulletin on each day	5 minute bulletin on each day
<b>East and West Midlands (ITV Central)</b>	Lunchtime	6½ minute bulletin for the whole region	Separate local bulletins: East Midlands: 3 minutes West Midlands: 3 minutes
	Evening	Single 30 minute news programme for the whole region, but with 6 min local opt outs for each of East and West Midlands	Separate local programmes: East Midlands: 20 minutes of local news in 30 minute programme West Midlands: 20 minutes of local news in 30 minute programme
	Late Evening	Separate local bulletins: East Midlands: 8 minutes West Midlands: 8 minutes	Separate local bulletins: East Midlands: 5 mins West Midlands: 5 mins
	Sat / Sun	Single 10 minute news bulletins on each day, for the whole region	Separate local bulletins on each day: East Midlands: 5 minutes West Midlands: 5 minutes
<b>Yorkshire (ITV Yorkshire)</b>	Lunchtime	6½ minute bulletin for the whole region	Separate local bulletins: North: 3 minutes South: 3 minutes
	Evening	Single 30 minute news programme for the whole region, but with 6 min local opt outs for each of the North (N, S and W Yorkshire) and South (E Yorkshire and Lincolnshire) of the region	North: 20 minutes of local news in 30 minute programme South: 20 minutes of local news in 30 minute programme
	Late Evening	Separate local bulletins: North: 8 minutes South: 8 minutes	Separate local bulletins: North: 5 minutes South: 5 minutes
	Sat / Sun	Single 10 minute news bulletins on each day, for the whole region	Separate local bulletins on each day: North: 5 minutes South: 5 minutes
<b>London (ITV London)</b>	Lunchtime	6½ minute bulletin	3 minute bulletin
	Evening	30 minute regional news programme	20 minutes of regional news in 30 minute programme
	Late Evening	8 minute bulletin	5 minute bulletin
	Sat / Sun	10 minute bulletin on each day	5 minute bulletin on each day
<b>South and South East of England and the Thames Valley (ITV Meridian)</b>	Lunchtime	6½ minute bulletin for the whole region	Separate local bulletins: South East: 3 minutes South: 3 minutes Thames Valley: 3 minutes
	Evening	Single 30 minute regional news programme for the whole Meridian region, but with two 15 minute local opt	Separate local programmes: South East: 20 minutes of regional news in 30 minute programme

		outs one for the South East and one for the South and the Thames Valley	South & Thames Valley: 20 minutes of local news in 30 minute programme, but with 15 minute local opt-outs for each of the South and the Thames Valley parts of the area
	Late Evening	Separate local bulletins: South East: 8 minutes South & Thames Valley: 8 minutes	Separate local bulletins: South East: 5 minutes South: 5 minutes Thames Valley: 5 minutes
	Sat / Sun	Single 10 minute news bulletins on each day, for the whole region	Separate local bulletins on each day: South East: 5 minutes South: 5 minutes Thames Valley: 5 minutes
<b>West of England (ITV West)</b>	Lunchtime	6½ minute bulletin, shared with Westcountry	3 minute news bulletin just for the West
	Evening	Single 30 minute regional news programme shared with Westcountry, but with a 15 minute opt-out for the West	20 minutes of regional news for the West within a 30 minute programme
	Late Evening	8 minute bulletin just for the West	5 minute news bulletin just for the West
	Sat / Sun	10 minute bulletin on each day, shared with Westcountry	5 minute news bulletin on each day, just for the West
<b>South West of England (ITV Westcountry)</b>	Lunchtime	6½ minute bulletin, shared with the West	3 minute news bulletin just for Westcountry
	Evening	Single 30 minute regional news programme shared with Westcountry, but with a 15 minute opt-out for Westcountry	20 minutes of regional news for Westcountry within a 30 minute programme
	Late Evening	8 minute bulletin just for Westcountry	5 minute news bulletin just for Westcountry
	Sat / Sun	10 minute bulletin on each day, shared with the West	5 minute news bulletin on each day, just for Westcountry