



Renewal of Channel 3 licences: proposed changes to licensed area for Wales and West of England Licence and South West of England Licence

	Consultation
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Section 1

Summary

- 1.1 This is one of three consultations Ofcom is currently undertaking regarding the proposed renewal of Channel 3 licences. This consultation relates to the proposed modification of Channel 3 licensed areas for the period commencing 1 January 2015. The other two consultations relate to the programming commitments for Channel 3 and Channel 5 licensees under their existing licences, and the methodology for setting the financial terms for Channel 3 and Channel 5 licences from 1 January 2015, should the licences be renewed.
- 1.2 In 2004, Ofcom issued digital replacement licences under the Communications Act 2003 ("the Act") for the operation of the regional Channel 3 services, the National Breakfast licence and Channel 5 ("the Licences"). These licences are due to expire on 31 December 2014. Under the provisions of the Act, the licensees may apply to renew their licence(s) for a further period of 10 years.
- 1.3 The 15 regional Channel 3 licences are held by the following companies: the 12 regional licences covering England, Wales, the Channel Islands and the south of Scotland are currently held by ITV Broadcasting Limited, a wholly owned subsidiary of ITV plc, the two licences covering northern and central Scotland are held by STV Central Ltd and STV North Ltd, both subsidiaries of STV Group plc ('STV'), and the licence for Northern Ireland is held by UTV Ltd ('UTV').
- 1.4 In line with our duties under section 229 of the Act, we submitted a report to the Secretary of State on matters which are relevant to the question of Channel 3 and Channel 5 licence renewal. This was published in May 2012.¹
- 1.5 On 21 November 2012, the Secretary of State advised that she did not intend to block the renewal of the licences.² The Secretary of State also said that she was willing to extend the Channel 3 and Channel 5 licences for a period of one year at Ofcom's request in the event that Ofcom is unable to reach settlements with the licensees in order for renewal to take effect from 1 January 2015.
- 1.6 In addition, the Secretary of State asked Ofcom to consider redefining the boundaries of the Channel 3 licences for Wales, and for the West of England and for the South West England, with the aim of creating separate licences: one for West & South West England and one for Wales.
- 1.7 Applications for licence renewal have been received from all of the current licensees.
- 1.8 Ofcom is therefore continuing with the renewal process of each of the regional Channel 3 licences, the National Breakfast Licence and the Channel 5 licence for a period of 10 years, commencing on the expiry of the existing term, i.e. 1 January 2015. Under section 216 of the Act, if Ofcom decides to renew a licence, it must be renewed on the same terms and conditions, subject to any modifications made with regard to the Channel 3 licences coverage area and in accordance with the determination made regarding the financial terms on which the licence will be renewed. This is subject to a separate consultation, as noted above.

¹ <http://www.culture.gov.uk/publications/9535.aspx>

² <http://stakeholders.ofcom.org.uk/broadcasting/tv/c3-c5-licensing>

- 1.9 This consultation document sets out the rationale for amending the geographic scope of the Channel 3 licences for Wales, the West of England and the South West England, and seeks views from interested parties. ITV Broadcasting Limited has indicated that it does consent to these proposals.
- 1.10 Ofcom welcomes responses to this consultation by **2 May 2013**

Section 2

Background to the Consultation

Statutory Requirements

- 2.1 The existing regional Channel 3 licences, the National Breakfast licence and the Channel 5 licence expire on 31 December 2014.
- 2.2 The Act places a duty on Ofcom to report to the Secretary of State about matters which are relevant to the question of renewal of the Channel 3 and Channel 5 licences. As required under section 229 of the Act, we submitted a report to the Secretary of State in May 2012.³ This report sets out our views as to whether the existing licence holders would be able to contribute, at a commercially sustainable cost, to the fulfilment of public service broadcasting purposes in the 10 years following expiration of their licences. It was then open to the Secretary of State to act in one of three different ways:
- to intervene to block licence renewal, requiring Ofcom to auction the vacant licences;
 - not to intervene, so that Ofcom proceeds with the renewal process; and
 - to extend the existing licences for a number of years.
- On 21 November 2012, the Secretary of State published a statement making clear that she does not intend to block the renewal of the existing Licences.⁴
- 2.3 Under section 216 of the Act, Ofcom may decide not to renew a licence if it is not satisfied that the existing licence holder (if his licence were renewed) would continue to meet the requirements set in its existing licence in relation to:
- the public service remit for the licensed service;
 - programming quotas;
 - news and current affairs programmes; and
 - programme production and regional programming.
- 2.4 We indicated in our section 229 report that we are satisfied that the existing licensees would be able to meet these requirements if their licences were to be renewed for a further 10 years. In light of the Secretary of State statement, we are therefore continuing with the renewal process of the regional Channel 3 licences, the National Breakfast licence and the Channel 5 licence..
- 2.5 Section 216 of the Act requires that renewal must be on the same terms and conditions subject to the following: the geographic scope of Channel 3 licences and the financial terms of the licence. This consultation is concerned with the first of these provisos; a modification to the geographic scope of two of the Channel 3 licences.

³ <http://stakeholders.ofcom.org.uk/broadcasting/tv/c3-c5-licensing>

⁴ <http://www.culture.gov.uk/publications/9535.aspx>

- 2.6 Under section 216A of the Act, for the purposes of renewal of a Channel 3 licence, such a modification must:
- include all or part of the area to which the licence currently relates; and
 - may include all or part of another area if the holder of the licence for the other area gives (and does not withdraw) consent before the determination is made.
- 2.7 Any proposal to modify the geographic scope of a Channel 3 licence must be consistent with our general statutory duties (as set out under section 3 of the Act). Section 3(1) of the Act provides that it shall be Ofcom principal duty in carrying its functions to:
- further the interests of citizens in relation to communications matters; and
 - further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.8 In carrying out our duties, we must have regard to the considerations listed in section 3(4) of the Act to the extent this may appear to be relevant. These includes:
- the opinions of consumers in relevant markets and of members of the public generally;
 - the different interests of persons in the different parts of the United Kingdom.
- 2.9 As set out above, this consultation only relates to the proposed modification of the geographic scope of the Channel 3 licences for Wales, the West of England, and the South West of England. We are consulting separately on proposed changes to the licences programming commitments so that, subject to consultation, any changes to the terms of the Licences will take place prior to any renewal.

Section 3

Changes to the Channel 3 regional map

Considerations for changes to licence areas for Wales and the West of England and the South West of England.

3.1 The regional Channel 3 licences currently consist of the following regions:

Licensee	Channel 3 Region
ITV Broadcasting Limited	The Channel Islands English-Scottish Border North East England Yorkshire, Lincolnshire and North Norfolk North West England and the Isle of Man Midlands East of England London Weekday London Weekend South and South East England, South West England Wales and the West of England
STV North Limited	Northern Scotland
STV Central Limited	Central Scotland
UTV Limited	Northern Ireland

3.2 In the second PSB review,⁵ we examined the potential to restructure the Channel 3 licences by moving from the existing 15 licence regional structure to one based on five licences, one for each of England, Wales, Scotland, Northern Ireland and the Channel Islands.

3.3 As part of that review, we acknowledged both the heightened role of public service content in the Nations and the need to sustain plurality to enable civic engagement with devolved institutions. However, given the differences in the existing licence

⁵ http://stakeholders.ofcom.org.uk/consultations/psb2_1/

structure, we also recognised that there was unlikely to be a one-size-fits-all solution to the needs of each nation:

- in Scotland, both the Northern Scotland and Central Scotland licences are held by STV with a separate 'Border' licence held by ITV Broadcasting Limited combining the south of Scotland and Cumbria in England; and
- the existing licence covering Wales held by ITV Broadcasting Limited also includes the West of England, although the two constituent areas receive separate regional programming and are subject to separate licence obligations.

3.4 At the time of the second PSB review we noted the view held by many respondents that a separate licence for each nation could bring greater accountability in regard to the service provided. Ofcom's Advisory Committee for Wales also emphasised its support for the creation of a separate Channel 3 licence for Wales.

3.5 Our section 229 report to the Secretary of State further examined the case for making amendments to the Channel 3 services including the licensing arrangements in Wales.⁶ This report also considered the possibilities for restructuring Channel 3 service broadcast in the South of Scotland.

3.6 As set out above, following our section 229 report, the Secretary of State asked us to consider redefining the boundaries of the Channel 3 licences for Wales, the West of England and the South West of England and consider further possible changes to the regional content received by viewers in the South of Scotland. Our proposal to amend the geographic scope of the Channel 3 licences which cover Wales is set out below. We will be consulting separately on our proposals to increase the amount of Scotland-related news and current affairs programming of particular relevance to the Scottish part of the Channel 3 Border region.

Proposal

3.7 Although Wales and the West of England are currently covered by a single licence, in practice these two regions are clearly distinct in that they receive separate regional programming content and are subject to separate licence obligations. In addition, the existing licence conditions provide that content for the West of England sub-region may share some regional programming with the licensee for the South West of England. In line with our section 229 report and the Secretary of State's statement, we are now proposing to formalise these separate licence obligations in the licences boundaries by separating the West of England region from Wales.

3.8 Subject to ITV Broadcasting Limited's consent, we are therefore proposing to remove the West of England from the Wales and West of England licence, and attach this sub-region to the South West of England licence. This would result in separate licences: one for West & South West England and one for Wales.

3.9 This proposed change would not in itself result in any changes to the programming received by viewers in either the West of England or Wales nor to the licence obligations of ITV Broadcasting Limited. As set out above, the two regions within this licence already have separate content obligations for each area. Although the change is of an administrative nature, it will meet the demand for the creation of a separate Welsh licence as set out above.

⁶ Section 5 <http://stakeholders.ofcom.org.uk/broadcasting/tv/c3-c5-licensing>

- 3.10 ITV Broadcasting Limited has indicated that it is happy to consent to separating the West of England region from Wales and attaching the West of England to the South West of England licence. In the event that ITV did not confirm this formally, and as set out in our report to the Secretary of State, Ofcom would have the option to consider whether it would be appropriate not to renew these licences, and instead to auction new licences following the process as set out in the Broadcasting Act of 1990.

Question 1: Do you agree with Ofcom's proposal to make changes to the geographical areas of the Wales and West of England licence and the South West of England licence, to create stand-alone licences: one for West & South West England and one for Wales?

ITV Wales and West and South West Licence areas



Section 4

Next steps

4.1 Following this consultation, and as part of the on-going renewal process, Ofcom will invite the licensees to finalise their applications by submitting the application fee for renewal. In the case of the Channel 3 licences, Ofcom will also specify the geographic areas for which we are proposing to issue the renewed licences. Subject to the responses received to this consultation, amendment will be made to the geographic scope of the Channel 3 licences for Wales, the West of England and the South West of England.

4.2 The key dates in the process, which reflect statutory requirements, are as follows:

	Opening Date for application	Closing Date for application	Earliest Date Ofcom can award licence renewal⁷	Licence expiration date
Channel 3 and Channel 5 Licences	31 December 2010	15 March 2013	30 June 2013	31 December 2014

⁷ Section 216 (9) of the Act sets out that Ofcom must not grant renewal more than eighteen months before the end of the licensing period from the end of which the renewal will take effect.

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-licensed-area/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 (see Annex 3), 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 attaching your response in Microsoft Word format, together with a consultation response coversheet.

Responses may alternatively be posted to the address below, marked with the title of the consultation.

Oli Bird
Ofcom, Commercial, Content and Consumer Affairs Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA

- A1.4 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.
- A1.5 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Oli Bird on 3and5relicensing@ofcom.org.uk.

Confidentiality

- 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, ideally on receipt. 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 also place such parts in a separate annex.

- A1.8 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.
- A1.9 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/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in the spring/summer of 2013
- A1.11 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

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 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. 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.
- A1.14 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

Annex 2

Ofcom's consultation principles

- A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

- A2.2 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

- A2.3 We will be clear about who we are consulting, why, on what questions and for how long.
- A2.4 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.
- A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A2.6 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.
- A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

- A2.8 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.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 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.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

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

DECLARATION

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

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

☐

Name

Signed (if hard copy)

Annex 4

Consultation question

Question 1: Do you agree with Ofcom's proposal to make changes to the geographical areas of the Wales and West of England licence, to separate the constituent regions resulting in a single licence for Wales, and a larger West and South-West of England licence ?