EXPLANATORY MEMORANDUM TO

THE BROADCASTING (INDEPENDENT PRODUCTIONS) REGULATIONS 2025

2025 No. 1235

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Ian Murray, Minister of State for Creative Industries, Media and Arts at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

2.2 Mark Griffin, Deputy Director for TV and Broadcasting, at the Department for Culture, Media and Sport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Aimee Bell at the Department for Culture, Media and Sport can be contacted by email at the following address with any queries regarding the instrument: enquiries@dcms.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations set definitions and quotas for broadcasters in relation to independent productions. They implement amendments to the regulatory regime for independent productions quotas for the BBC, S4C and Channels 3, 4 and 5 (PSBs), made by the Media Act 2024.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Public service broadcasters (PSBs) in the UK operate under a 'PSB compact' - which means in exchange for certain benefits they must produce free-to-air public service content that is universally available to the public. Benefits include guaranteed access to distribution on digital spectrum and prominence on regulated electronic programme guides (TV guides). E.g. the first five channel slots are allocated to the public service channels. Obligations include quotas for broadcasting news and current affairs, and to commission programmes from independent producers.

5.2 A ‘quota’ is a quantitative obligation placed on a channel, generally to make available (at least) a certain amount of a certain type of content. Most quotas apply to PSBs but there are also a small number of quotas that apply to non-PSB TV channels.

5.3 The previous independent productions quota was set as a percentage of qualifying hours. For each PSB 25% of their programming hours must have been for programming commissioned from independent producers. In each case, these quotas intentionally operate as ‘floors’ rather than ‘ceilings’.

5.4 The Media Act 2024 amends the regulatory regime for quotas to permit the delivery of the independent productions quota via a wider range of services, including PSBs’ on-demand services (e.g. ITVX). This change is to reflect the fact that viewers are now increasingly accessing PSB content beyond the PSBs’ linear channels. The 2024 Act also amends the regulatory regime to convert the percentage quota to a number of hours quota so that it can also apply to on-demand programming.

5.5 These Regulations specify the number of hours that are required for each PSB to satisfy their independent productions quota. We have calculated the new “modernised” quota by taking a five-year average (2020-2024), which is then multiplied by the average number of qualifying hours over the last five years (25%) to get the average effective quota over that period (this sample includes the boom years of 2021 and 22, but also the more difficult years of 2020 and 2023).

5.6 To note, the independent productions quota level for Channel 4 has been increased from 25% to 35%, converted into hours. This is an agreed mitigation after the Media Act 2024 removed the publisher-broadcaster model, permitting Channel 4 to pursue in-house production; and after Channel 4’s subsequent acquisition of Firecrest Films on 16 September 2025.

5.7 This methodology has been agreed with Ofcom and the PSBs. Our ambition is to ensure that the quota remains fit-for-purpose and allows for contribution via designated on-demand services while also setting it at a level which is no more or less demanding than the current quota. It should be noted that the percentage quota that applies to non-PSBs will remain unchanged.

5.8 These Regulations also revoke and replace the Broadcasting (Independent Productions) Order 1991. In doing so, it updates and modernises the definitions of “independent production” and “independent producer” but without making any substantive changes. An “independent production” continues to be, for the most part, a programme commissioned by a PSB and made by an independent producer; and an “independent producer” continues to be a producer which is not owned, controlled or otherwise connected with a broadcaster.

5.9 The Media Act 2024 also gives the Secretary of State the ability to determine the treatment of repeats, i.e. what repeats of PSB programmes can/cannot contribute to their independent productions quota. As was previously the case in the linear space, we believe repeats should not count towards the independent productions quota given the importance of this content and its focus on the way in which programmes are made. As such, these Regulations exclude repeats from the definition of an “independent production”.

What was the previous policy, how is this different?

5.10 The previous regime for PSBs’ independent productions quotas only allowed fulfilment of the quota via programmes broadcast on a PSB’s linear broadcast

channel. (e.g. BBC One, BBC Two, ITV1 etc.). As such, the quota level was set as a proportion of "qualifying hours" on that channel.

5.11 These Regulations will change the previous proportional independent productions quota to a minimum number of hours quota to make it deliverable across a wider range of services. The methodology for converting these quotas from proportional to absolute is set out at para 5.5.

6. Legislative and Legal Context

How has the law changed?

6.1 Part 1 of the Media Act 2024 amends Part 3 of the Communications Act 2003 to modernise the public service remit and PSB quotas system.

6.2 Section 277 of the 2003 Act provides for quotas for independent productions for licensed public service channels. Schedule 12 to that Act makes similar provision for the BBC and S4C. The 2024 Act amends these provisions to change the way in which the PSBs may deliver their quotas: the minimum proportion of qualifying broadcast hours (25%) which must be independent productions is replaced by a requirement to make available (e.g. by broadcasting or providing content by means of their designated on-demand services) a number of hours of independent productions.

6.3 These Regulations specify the number of hours of independent productions that must be made available by each of the PSBs (the methodology for calculating these new "modernised" quotas is set out at para 1.12). In relation to Channel 3, the level of the quota depends on whether the provider of a regional Channel 3 service is part of a group of companies that includes the provider of the national Channel 3 service. This means that the quota for ITV regional providers is 750 hours per year, as ITV also provides that national (breakfast) Channel 3 service; whereas the quota for the STV providers is 725 hours per year, to reflect the fact they do not have breakfast service obligations.

6.4 These Regulations also define the terms "independent producer" and "independent production" for the purpose of the independent production quotas for the PSBs. They also define the terms "qualifying programmes" and "independent productions" for the purposes of the quotas for certain non-PSB broadcasters under section 309 of the 2003 Act. In doing so, they revoke and replace the Broadcasting (Independent Productions) Order 1991. While the drafting of these definitions has been updated, there are no substantive changes.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 As required by the Communications Act 2003, the Secretary of State has consulted Ofcom, the BBC and S4C before making these Regulations. An initial draft of the Regulations was shared with the statutory consultees, all other PSBs and Pact – the trade body representing independent television producers in the UK – on 19 March 2025. Following this, the Regulations were published in draft on 6 May 2025. Meanwhile, Ofcom consulted each PSB licence holder on their determination of appropriate quota levels and changes to any licence conditions (between 15 May and 10 July 2025).

7.2 The Department has used this engagement with industry to inform the drafting of these Regulations. Following comments on the version published in draft, the Department sought to clarify the drafting relating to providers of Channel 3 services. We not receive any other substantive comments.

8. Applicable Guidance

8.1 In accordance with the Communications Act 2003, PSBs are required to develop and follow a code of practice, which they apply when commissioning content from independent producers. Such codes of practice must be aligned with guidance issued by Ofcom. This system of regulation is commonly referred to as the 'Terms of Trade'. Ofcom consulted on their guidance on codes of practice (27 Jan-10 March 2025)[1]. We expect any updates to Ofcom's guidance will be published before the new independent productions quotas take effect on 1 Jan 2026.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business, and the fact that the updated quotas will be set at levels that are no more or less demanding than the existing quotas. On this basis, proportionate analysis has been undertaken by the Department to assess the costs and benefits of the legislation. A De Minimis Assessment (DMA) has therefore been prepared.

9.2 Costs and benefits have also been assessed in the Department's Impact Assessment[2] for the Media Act 2024.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies for the reasons set out above.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Ofcom, as the independent media regulator, will continue to be responsible for monitoring the delivery of PSB quotas, including the independent productions quota. Under sections 264 and 264A of the 2003 Act, Ofcom must report regularly (at least every five years) as to the achievement of the PSB remit in the UK and make such recommendations as it considers appropriate, which may relate to the delivery of PSB quotas. Ofcom also has a statutory monitoring and reporting role under section 358 of the 2003 Act.

10.2 DCMS will, however, monitor the implementation and impact of this change on an ongoing basis through engagement with stakeholders and reference to relevant data

[1] https://www.ofcom.org.uk/tv-radio-and-on-demand/public-service-broadcasting/consultation-revised-guidance-for-public-service-broadcasters-on-commissioning-codes-of-practice
[2] https://assets.publishing.service.gov.uk/media/65426bb49e05fd000dbe7b72/PSB_Reform_IA_-_Published_Version__1_.pdf

sources. The department meets with a wide range of stakeholders, including PSBs, commercial broadcasters, producers and representatives of viewers regularly and will continue to do so throughout the implementation and post-implementation phases.

10.3 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Ian Murray, Minister of State for Creative Industries, Media and Arts has made the following statement:

"A statutory review class is not necessary because the impact of the measures are not expected to be significant and there are no factors that would make it particularly desirable to include a review clause. In particular, there are existing review plans set out in legislation under which Ofcom will regularly assess the quotas for original productions and regional programme-making."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State for Creative Industries, Media and Arts has made the following statement regarding Human Rights:

"In my view the provisions of the Broadcasting (Independent Productions) Regulations 2025 are compatible with the Convention rights."

13. The relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").