EXPLANATORY MEMORANDUM TO

THE BROADCASTING (REGIONAL PROGRAMME-MAKING AND ORIGINAL PRODUCTIONS) (AMENDMENT) REGULATIONS 2025

2025 No. [XXXX]

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 create new provisions in relation to quotas for regional programme-making for public service broadcasters and amend the Broadcasting (Original Productions) Order 2004 in order to implement provisions set out in 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 England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The UK public service broadcasters (PSBs) each 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 for 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 and/or make available (at least) a certain amount of a certain type of content. Most broadcast TV quotas apply to PSBs but there are also a small number of quotas that apply to non-PSB TV channels.

5.3 Some quotas are set as a percentage of qualifying hours which is the case for the current original productions quota (e.g. for Channel 5, 50% of qualifying programming hours must be original productions, with a peak-time requirement of 45%). Other quotas are set on an ‘expenditure’ basis, meaning what percentage of spend is allocated. In the case of regional productions the quota is currently 35% for both expenditure and programming for the national and regional Channel 3 licences.

5.4 These quotas intentionally operate as ‘floors’ rather than ‘ceilings’, and, in practice, there are numerous examples of public service broadcasters exceeding one or more of its quotas.

5.5 The Media Act 2024 amends the regulatory regime for quotas to permit the delivery of the original productions and regional programme-making quotas via a wider range of services, including the PSB’s on-demand service (e.g. ITVX). This change is to reflect the fact that viewers are now increasingly accessing PSB content beyond the PSBs’ linear channels.

5.6 These Regulations relate to the quotas for original productions (e.g. programmes commissioned by the PSB, rather than acquired from another broadcaster or intermediary), as well as the regional programming-making quotas (e.g. programmes made outside London).

5.7 Specifically, these Regulations amend the Broadcasting (Original Productions) Order 2004 to update the definition of “original productions” to include programmes commissioned by the PSB with a view to their first being made available in the UK (rather than being shown on television) to align with the changes made by the Media Act 2024 to permit the delivery of the original productions quota across a wider set of qualifying audiovisual services.

5.8 The 2024 Act 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 quotas. This includes the ability to delegate discretion on the treatment of repeats for original productions and regional-programme making to Ofcom.

5.9 Given that Ofcom is responsible for setting the level of the original productions and regional-programme making quotas, it makes sense for Ofcom to also determine the treatment of repeats in those areas. This will ensure that decisions made about the level of the PSBs’ quotas and how many times programmes can contribute to them operationally make sense. These Regulations therefore confer powers on Ofcom to determine whether “repeats” may be counted.

5.10 Furthermore, Ofcom will be given the power to determine the types of content which can count towards the original production quota. For example, Ofcom will consider whether closedown time teleshopping, advertising, trailers and promotional material can count towards fulfilment of the quota.

What was the previous policy, how is this different?

5.11 Currently the original and regional productions quotas can only be delivered by a PSB’s designated linear channel (e.g. BBC One, BBC Two, ITV1 etc). These Regulations will make the necessary changes to permit the PSBs to deliver their

original and regional productions quota across a wider set of "qualifying audiovisual services".

5.12 In terms of the treatment of repeats - Ofcom sets out current requirements in relation to the fulfilment of the original and regional productions quota in the PSB licences - including how many times programming can count. Currently repeats (on the main linear PSB channel) of original productions first shown on the main linear PSB channel can count towards the delivery of the quota. However, programming that first appeared on one of the licensed PSBs' other channels or online cannot count towards the quota - including repeats. For the current regional production quota, repeats cannot count towards the quota.

5.13 These Regulations therefore give Ofcom the same discretion to determine whether repeats of regional and original productions should count towards the new "modernised" quotas in the updated PSB licences.

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 update and simplify the current public service remit for television.

6.2 Sections 286 and 288 of the 2003 Act provide for the regional-programme making quotas for licensed public service channels (i.e. the PSBs). The 2024 Act amends these provisions to change the way in which the PSBs may deliver their quotas e.g. by providing content by means of their on-demand services. The 2024 Act also inserts new section 278C into the 2003 Act making provision about the fulfilment of the quotas. In particular, the Secretary of State must determine (or require OFCOM to determine) whether audiovisual content consisting of the same or substantially the same material (i.e. repeats) is to be counted towards meeting the regional-programme making quota condition. These Regulations therefore confer functions on OFCOM to determine this matter.

6.3 Section 278 of the 2003 Act provides for quotas for original productions for the licensed public service channels. The 2024 Act amends this provision to change the way in which the PSBS may deliver their quotas. The 2024 Act also amends section 278 to replace reference to "proportion" of hours which must be made available with references to "duration (in total)" i.e. number of hours. These Regulations therefore amend the Broadcasting (Original Productions) Order 2004 (which defines an "original production") in order to implement these changes. These Regulations also amend the 2004 Order to confer functions on OFCOM: (a) to determine whether "repeats" are to be counted towards the quota for original productions for the licensed public service channels and S4C; and (b) to be able to exclude certain types of content (e.g. teleshopping) from counting towards the quota.

Why was this approach taken to change the law?

6.4 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. The Secretary of State has also consulted other interested parties. An initial draft of the Regulations was

shared with the statutory consultees and all other PSBs on 19 March 2025. The Regulations were then published in draft on 6 May 2025[1]. Meanwhile, Ofcom has consulted each PSB licence holder and S4C on the methodology for determination of appropriate quota levels, and the treatment of repeats (between 15 May - 10 July 2025)[2].

7.2 The Department has therefore used this engagement with industry to inform the drafting of these Regulations. Following initial correspondence with the statutory consultees and publication in draft, the Department did not receive any substantive comments which required changes to the drafting.

8. Applicable Guidance

8.1 Ofcom is updating its guidance on regional programme-making and original productions quotas (following the wider consultation process mentioned at paragraph 7.1). We expect these updates will be published before the new 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 produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen. These Regulations do not create any new substantive regulatory burdens; they make technical changes to make the new quota regime operate properly.

9.2 Costs and benefits have been assessed at high-level in the Department's Impact Assessment[3] 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 as set out in their licences, including the original and regional programme-making quotas. Under sections 264 and 264A of the 2003 Act, Ofcom must report regularly (at least every five years) as to the

[1] Draft SI - The Broadcasting (Regional Programme-making) and Broadcasting (Original Productions) (Amendment) Regulations 2025 (https://assets.publishing.service.gov.uk/media/68148ae3a87f19ba7b3a8285/Draft_Broadcasting_regional_programme-making_and_broadcasting_original_productions_amendment_regulations_2025.pdf) (6 May 2025)

[2] Ofcom Consultation: Proposals to Update PSB Quotas (https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/proposals-to-update-the-psb-quotas/consultation-proposals-to-update-psb-quotas.pdf?v=397008) (15 May 2025)

[3] Media Act 2024 Impact Assessment: Modernising the UK's system of public service broadcasting impact assessment (https://assets.publishing.service.gov.uk/media/65426bb49e05fd000dbe7b72/PSB_Reform_IA_-_Published_Version__1_.pdf) (6 May 2025)

achievement of the PSB remit in the UK and make such recommendations as it considers appropriate, which may also relate to the delivery of PSB quotas. Ofcom also has a statutory monitoring role under section 358 of the 2003 Act.

10.2 DCMS will, however, monitor the implementation and impact of these changes on an ongoing basis through engagement with stakeholders and reference to relevant data 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 at the Department for Culture, Media and Sport 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 (Regional Programme-making and Original Productions) (Amendment) Regulations 2025 are compatible with the Convention rights."