

Channel 4 Response to the Review of Regional TV Production and Programming Guidance: Consultation

Executive Summary

- Channel 4 is committed to making a significant and meaningful contribution to talent, independent production companies and audiences in the Nations and Regions, so that the full economic and cultural benefits of TV commissioning are realised right across the UK.
- In order to achieve this, in 2018 we set out our 4 All the UK strategy, the biggest change to Channel 4's operating model in our 36 year history.
- This includes a commitment to increase regional production to a voluntary target of 50% by 2023, as well as the establishment of a new National HQ in Leeds and two Creative Hubs in Bristol and Glasgow, home to around 300 Channel 4 staff including key creative decision makers. These new offices will mean that for the first time we will have commissioners on the ground right across the country, strengthening relationships with production companies in the Nations and Regions and helping to catalyse our increased spend. We are in the process of delivering the strategy, with our new offices set to open in autumn 2019.
- In the context of this work we welcome Ofcom's timely review but believe it is vital that any resulting changes to the system help, not hinder, ongoing work to drive sustainable long-term growth in the Nations and Regions production sector.
- With this in mind we have concerns about the Ofcom proposals relating to a number of areas.

Changes to Substantive Base

- We are particularly concerned about the proposed change to the substantive base criterion which would require a base to be operational prior to the point of commission.
- We appreciate Ofcom's desire to address issues highlighted by the Call for Evidence, in particular concerns around 'brass plating', or temporary offices, however we do not believe the proposals under consultation are the right solution to these problems.
- Not only do we have real concerns about the workability of the proposals but we fear that such an approach limits strategic interventions from the PSBs and risks deterring people from opening legitimate new bases which play an important role in the long-term growth of the production sector outside of London.
- These concerns predominantly relate to the restrictive or chilling impact on four areas which will damage efforts to achieve long-term growth in the production sector outside of London:
 - Limiting strategic interventions from PSBs to strengthen and grow the production sector in the Nations and Regions.
 - Restricting interventions to broaden the production ecology in different regional sectors, which are key to long-term growth and the development of sustainable talent pipelines.
 - Impacting upon how centres of excellence are built and developed.
 - Penalising companies who - particularly in the current context - want to make long term, commercially sustainable moves, with the security of an initial commission to cover start-up cost.
- Rather than penalising those who choose to set up new substantive bases we should be supporting such moves. Opening a new base is a stretch for a company, involving considerable start-up costs, and to do so without an initial commission to cover these costs

could be detrimental to the long-term sustainability of both the new office and the wider business.

- The timing of the changes, at a point when there is growing interest in the establishment of new bases in the Nations and Regions, means the scale of this negative impact is likely to be particularly large and risks stalling this positive momentum.
- As such, we believe that the approach taken in the joint PSB guidance represent a more effective solution. This echoes Ofcom's reaffirmation that all three elements of the substantive base definition must be met, and states clearly that a substantive base must be more than just a production base. This is supported and complimented by the other proposed changes to the Ofcom guidance, which we support.
- Should Ofcom see this as insufficient, we would be more supportive of an addition to the guidance which stipulated that the substantive base must be operational prior to the point of *contract* rather than commission and a removal of the expectation of a previous commission from that base. This would overcome challenges about defining the point of commission and would allow reasonable time for a company to establish a new base and ensure they are meeting all three elements of the substantive base criterion.

Data gathering and reporting by the broadcasters

- It is vital that the level of data broadcasters are expected to collect and hold is appropriate, striking the right balance between improving transparency and deepening insight into how the system is working, whilst also managing sensitivities around commercial or personal data, and avoiding unnecessary or damaging burden upon smaller production companies.
- Ofcom have already implemented changes to their reporting processes which increase the level of detail required from broadcasters and in turn production companies. Once they have bedded in we hope these changes will improve transparency and confidence in the system.
- Ofcom state in the consultation document that warranty or declaration from suppliers alone is insufficient for compliance. However, we believe that a system where warranty and self-declaration is supported by spot checks, detailed conversations with production companies, and increased data collection is sufficient. Particularly alongside greater alignment from broadcasters around these processes, and clearer guidance on how the criteria should be applied.

Timings

- Another area of concern is the proposed timeframe for implementation. We do not believe that it is realistic, or proportionate for the changes to come into force from January 2020 as the nature of commissioning cycles and the level of forward planning which goes into delivering against the Ofcom quotas would mean changes that took effect from 2020 would, in effect, be retrospective.
- Programmes are commissioned long in advance of transmission, with a significant proportion of programmes commissioned for 2020 now well into production, warranted as regional and working to deliver that on the basis of the current criteria. Regional programmes which are required to be delivered in line with new, revised guidance need to be commissioned and contracted as such or we will face an impossible situation with compliance. Broadcasters cannot start to do so until the final changes are published, and in the meantime more and more programmes will be commissioned and begin production on the basis of the current system.

- These issues will apply to all PSBs, but in the Channel 4 case changes to the system will be particularly disruptive as we are currently in the process of implementing our 4 All the UK strategy, which was developed on the basis of the current system.
- We would ask that Ofcom works with us to develop a timetable that does not hinder or disrupt our strategy. To be workable we believe the implementation date must either be significantly later or it should apply to programmes *commissioned* from January 2020 as opposed to programmes transmitting from that point.

The joint PSB Guidance and Ofcom's new explanatory notes

- The review has already had the positive outcome of stimulating cross-broadcaster cooperation, with the UK PSBs having come together in response to the CfE to develop and publish a joint guidance note on the application of the existing Ofcom criteria, to improve clarity and consistency. This was the result of extensive cross-broadcaster work and we believe more of this cross-PSB collaboration and dialogue can lead to significant improvements in the operation of the system, as well as fostering more cooperation around the mutual challenges faced when working to build the regional production sector.
- We believe the joint PSB guidance has the potential to improve confidence in the system, address issues around substantive base, and ensure the intentions behind the regional production obligations are better met. There is significant overlap between the joint PSB guidance and Ofcom's new explanatory notes and we want to ensure that these additional sources of explanation, whilst retaining important flexibility, ultimately add clarity, and do not lead to further confusion or ambiguity.
- This joint PSB document is more detailed than Ofcom's own proposed explanatory notes, covering what we see as a number of key areas requiring clarity that Ofcom do not, for example defining a freelancer's usual place of work. The rationale for choosing which areas to cover and which to exclude is unclear. We also believe that in some areas, particularly off-screen talent, the proposed wording of Ofcom's explanatory notes could be unhelpful, and would suggest that alignment with the joint PSB guidance would be a better approach.
- As such we would ask Ofcom to look closely at the joint PSB documents as part of this consultation, and we would question whether, rather than including the explanatory notes within the guidance as a proposed, an alternate approach could add more value, such as a separate, more extensive Ofcom explanatory document which aligns as far as possible with the broadcasters' and can be updated over time.

Introduction

Channel 4's work in the Nations and Regions

As we set out in our submission to the Call for Evidence, for a number of years Channel 4 has been delivering an ambitious and evolving strategy for achieving long term, sustainable growth in the Nations and Regions' production sector. This strategy for growth has been centred around a holistic package of funding, support and talent development initiatives led by our Nations and Regions team in Glasgow. This includes:

- Providing Alpha Development Funding and bespoke support for small and emerging production companies;
- Working to address regional skills and training needs, including around post-production;
- Using our Indie Growth Fund to support companies during key stages of growth in the Nations and Regions;
- A dedicated programme of work to strengthen relationships between Channel 4 commissioners and production companies outside of London;
- And supporting the meaningful relocation of London-based companies and their commissions.

This strategy has been highly effective. Since the guidance was introduced in 2004 our spend in the Nations and Regions has increased by over 60% and more than £70m, from £116m in 2005 to £189m in 2017 and our Growth Fund companies more than doubled their turnover in 2016.

4 All the UK

However, we want to go further, and build on the momentum which we have achieved. That is why, in March 2018, we announced our new '4 All the UK' strategy which represents a step change in our work in the Nations and Regions and the biggest change to the structure of the organisation in its 36-year history. It will ensure that Channel 4 is serving the whole of the UK, significantly boosting jobs in the Nations and Regions and representation of all the UK on our television screens. The strategy is made up of a number of elements:

- At the heart of the strategy is a major new commitment from Channel 4 to significantly increase its Nations and Regions content spend from its current quota of 35% to a new voluntary target of 50% of main channel spend by 2023.
- This will result in a cumulative boost of up to £250m in Channel 4's Nations and Regions commissioning spend and support up to 3000 additional jobs in the Nations and Regions economy.
- To support and catalyse this spend across the UK, in 2019 Channel 4 will move to a multi-site operating model, establishing a new National HQ in Leeds and two new smaller creative hubs in Glasgow and Bristol— home to 300 jobs from across the business including key creative decision makers.
- Programme commissioning editors overseeing significant budget and with responsibility for some of Channel 4's biggest shows will be based across the three new sites – alongside a variety of other creative and business functions.
- Once the new offices are open over 50% of Channel 4's existing Nations and Regions suppliers will be within a one hour train journey of one of our offices. This will bring Channel 4 commissioners much closer to potential suppliers across the country.
- Enabling end-to-end regional production, and in particular supporting the growth of post-production in the Nations and Regions has historically been a challenge, but is something we are absolutely committed to and we hope these measures will help to drive this.

- Channel 4 News will expand its footprint in the Nations and Regions opening new bureaux giving a huge boost to regional representation, aiming to become the first peak-time national news programme to regularly co-anchor from outside of London.

This strategy was developed through a period of intensive and detailed thinking about how we increase our impact in the Nations and Regions and how that work sits within our broader strategic vision for the future of Channel 4. The resulting strategy goes far beyond delivering our remit, meeting our licence obligations, or delivering the economic intentions behind Ofcom's regional production system. It is about ensuring that the UK media better reflects the country as a whole, both on and off screen, something we believe is critical if we are to meet the challenges faced by both our industry and our country. We are doing this, not only because as a public service broadcaster we are here to serve and reflect the UK in all of its diversity, but also because we believe that being truly diverse and inclusive, telling authentic, untold stories, and being a place where the doors are wide open to the best talent, wherever it comes from, are all absolutely fundamental if Public Service Broadcasters like Channel 4 want to compete and excel in an age of huge technological and market change.

4 All the UK is not only about improving regional representation and portrayal on screen and behind the camera – but also about making sure that people who want to have a successful career in our industry don't need to live in London to do so. Responses to the CfE have illustrated that those who do get into the industry have too often felt they had no choice but to spend time working in London if they want to progress in their careers or find enough work. We hope that our 4 All the UK strategy can help to change that, ensuring that the economic and cultural benefits of our great British broadcasting sector are spread right across the UK.

Whilst these ambitions are much wider than the specific economic policy intentions behind the Ofcom regional production system, they further those intentions, as well as objectives being pursued in other areas of Ofcom's work, particularly around diversity and inclusion. The framework which the regional production system provides is crucial in the context of our work. We must clearly prioritise meeting our licence obligations first and foremost. Furthermore, as a publicly owned but commercially funded broadcaster we must do so in a way that enables us to be commercially successful. Anything which undermines that commercial sustainability will not only limit our positive impact in the Nations and Regions but also risks damaging Channel 4 in the long term. That risk is particularly heightened at a time of intense competition and significant change both in the industry and at Channel 4 as we implement 4 All the UK.

Changes to the criteria which impact upon how we deliver our obligations will necessarily impact on our strategy. As such, we hope that Ofcom will work with us to ensure that any changes to the system do not limit our ability to compete commercially, and that they support, not hinder, our wider work in the Nations and Regions. Largely we think the proposed changes will have this positive impact, however, as we will set out in the answers below, there are areas where we have major concerns, in particular around the changes to substantive base. It is also important to emphasise that whilst, in isolation, individual changes may seem relatively insignificant, their cumulative impact may be more significant both on the individual PSBs' systems, processes and resources, and on the balance of the PSB compact.

Beyond Channel 4's 4 All the UK strategy, there are also other ongoing changes in the sector which will have a significant impact on Nations and Regions production and the challenges which the CfE highlighted, but which have not yet had time to take effect. For example, the review has already had the positive outcome of stimulating cross-broadcaster cooperation, with the UK PSBs having come together in response to the CfE to develop and publish a joint guidance note on the application of

the existing Ofcom criteria, to improve clarity and consistency. We believe this guidance has the potential to improve confidence in the system, address issues around substantive base, and ensure the intentions behind the regional production obligations are better met. However, as the joint PSB guidance was published shortly before Ofcom's consultation document we understand that Ofcom were unable to consider its contents in detail ahead of the publication of the consultation. As such we would ask Ofcom to look at it in detail as part of this phase of consultation, considering how it can improve the system and form part of the solution to the issues highlighted in the CfE, as well as looking closely not only at the differences between how the PBS guidance and their own explanatory notes approach specific questions, but also how the explanatory notes best add value in light of the joint PSB document.

This joint PSB document is more detailed than Ofcom's own proposed explanatory notes, covering what we see as a number of key areas requiring clarity that Ofcom do not, for example defining a freelancer's usual place of work. Ofcom's rationale for choosing which areas to cover and which to exclude is unclear. If Ofcom feel it is important to publish their own explanatory notes in addition to the broadcasters' document, then we would advocate alignment wherever possible and value clarification on some of these further questions. Whilst some in the industry may question whether the explanatory notes are necessary in light of the PSB guidance, we do acknowledge that where contentious questions occur around interpretation – such as on freelancers' usual place of work - there is value in being able to refer to an Ofcom document.

We also believe that in some areas, particularly off-screen talent, the proposed wording of Ofcom's explanatory notes could be unhelpful, and would suggest that alignment with the joint PSB guidance would be a better approach. However, we are encouraged that there is significant alignment on many of the principles. We want to ensure that these additional sources of explanation, whilst retaining important flexibility, ultimately add clarity, and do not lead to further confusion or ambiguity. As such we would question whether a slightly different approach could add more value, such as a separate, more extensive Ofcom explanatory document which aligns as far as possible with the broadcasters' and can be updated over time. This would enable the document to remain relevant and evolve to incorporate future challenges.

Beyond the value of the PSB guidance document itself, the dialogue and collaboration involved in its development represents important progress. The document was the result of extensive cross-broadcaster work and as we set out in our own response to the CfE we believe more of this cross-PSB collaboration and dialogue can lead to significant improvements in the operation of the system, as well as fostering more cooperation around the mutual challenges faced when working to build the regional production sector. Such, challenges, in particular around developing a broad, sustainable skills base in the Nations and Regions, are absolutely fundamental if we are to achieve our goal of sustainable, long term growth of the sector outside London.

Q1. Do you agree with our proposed change to articulate the intention of the regional production obligations at the start of the Guidance? (See wording at Annex 7).

1.1 Channel 4 agrees strongly with Ofcom's proposal to articulate the intention behind the regional production obligations at the start of the Guidance. As we set out in both our response to the Call for Evidence and in the Cross PSB Guidance document which was published in December 2018, we believe this intention to be of central importance and see it as a guiding principle for interpretation of the criteria by broadcasters and production companies. We also believe it should be at the heart of any changes Ofcom make to the regional production system. Each change, and their combined

impact, should be demonstrably furthering the intention behind the obligations. Where a change does not do so, or where it may actually act counter to this intention, we believe Ofcom should look again. Unfortunately, we believe this to be the case in relation to the proposed changes to substantive base, as set out below.

Q2 Do you agree with our proposed changes to the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

2.1 Channel 4 does not agree with the proposed changes to the substantive base criterion and has significant concerns about their impact, both on PSBs and on the production ecology in the Nations and Regions. Whilst we appreciate Ofcom's desire to address issues highlighted by the Call for Evidence, in particular concerns around 'brass plating' or 'pop-up offices', we do not believe the proposals under consultation are the right solution. We have real concerns about the workability of the proposals, and fear that the proposed approach risks deterring people from opening commercially sustainable new bases which play an important role in the long-term growth of the production sector outside of London.

2.2 We do not believe that the proposed solution addresses the problems highlighted through the CfE. It is not 'new' substantive bases that are of concern, but rather a) substantive bases which do not genuinely meet the three elements of the Ofcom criterion and b) substantive bases which meet the letter of the regulations but not their spirit. These issues stem not from the criterion itself, but from its application and enforcement. As such we believe that a more appropriate solution is to reaffirm the need for production companies to meet all three requirements of substantive base and for broadcasters to be rigorous around ensuring compliance. As Ofcom has proposed, this should be coupled with a clear restatement of the intentions behind the system, and the individual criterion which should always be referred back to when looking at whether a production qualifies.

2.3 Ofcom's proposed additions to section 6 of the guidance achieve this effectively and this is further supported by the joint PSB guidance document. We believe these changes should be given the opportunity to succeed before more substantive changes to the criterion are made, particularly as we believe these changes could actually have a perverse effect, as we set out below.

The role of new Nations and Regions bases

2.4 There are a number of examples where London-based companies that have established offices in the Nations and Regions have been an important ingredient in supporting long term, sustainable growth in production outside of London. Whilst there are of course, many other factors that have influenced the development of a particular production ecosystem, it has contributed to the establishment of centres of excellence as we've seen in Glasgow, Cardiff and Bristol. It can also play an important strategic role not just in growing a local sector, but in developing the ecology of programmes being made in a particular sector. It is important that changes to the system don't limit strategic interventions from broadcasters, or penalise production companies looking to open new offices in the Nations and Regions.

2.5 As Ofcom touch upon in section 5.21 of the consultation document, the proposed change will not only limit the role of broadcasters "in influencing the opening of new offices of established companies in the Nations and Regions at the point of commission," but could also "have an impact upon the PSBs' ability to commission particular production companies in certain areas if they do not have an existing substantive base there" and are "unable to meet both of the other criteria in the locality." As Ofcom note, that may in turn influence broadcasters' strategies for delivering against

their quotas. At a time of huge change and intense competition in the industry that could have a detrimental effect on PSBs ability to compete commercially and creatively.

2.6 This is particularly important for Channel 4 as we implement our 4 All the UK strategy. That strategy - which is a huge change for the organisation - was developed in the context of the current criteria, particularly the commitment to voluntarily increase the proportion of our production spend in the Nations and Regions to 50%. Growing independent production communities of scale in the Nations and Regions requires a multi-faceted, long term strategy. This should encourage greater diversity of supply and support for indigenous companies but also supporting companies that want to make a meaningful contribution to the production sector outside of London by opening offices in the Nations and Regions. What's more, with both BBC and Channel 4 out-of-London spend due to increase significantly, an increased focus on investment in talent and skills and the increasing Channel 4 commissioning presence, we anticipate more companies to proactively choose to open new regional offices.

2.7 It would be exceedingly rare, and, in many cases, ill-advised, for a production company to open a new office without an initial commission to provide a level of guaranteed income to cover the substantial start-up costs as well as overheads, and the salaries of the execs and business seekers in that office. To do so could be detrimental to the business and to the long-term sustainability of both the new office and the wider business. As such we have real concerns around the proposed change, which would require the substantive base to have been open prior to the point of commission. These concerns predominantly relate to the restrictive or chilling impact on four areas:

- Strategic interventions to strengthen and grow the production sector in an area
- Interventions to broaden the production ecology in a regional sector which are key to growth and the development of a sustainable talent pipeline
- Building and developing centres of excellence in order to grow a larger pool of highly skilled talent and genre specialism
- Supporting companies who want to make commercially sustainable moves in the current context with the security of an initial commission to cover start-up cost.

We set out each of these concerns in more detail below.

Strengthening and growing the production sector in an area

2.8 Supporting companies wanting to open new offices in different Nations and Regions, including by moving existing commissions to support this, can play an important role in achieving the critical mass needed for sustainable growth, for example by attracting post-production facilities and investment in new studio space. However, if we want this to succeed in the long term we need to ensure the optimum business conditions for such moves. This will normally mean a guaranteed initial commission to be made from the new office. What should matter when assessing the commission against the criteria is not how long the office has been open, but whether it meets all of the elements of substantive base criterion, and whether its intention is aligned with the aim set out in the revised guidance - an "authentic presence" which contributes to the local creative economy "on an ongoing basis".

Broadening the production ecology in a region in order to achieve growth and support a sustainable talent pipeline

2.9 The opening of new substantive bases can form part of a strategy developed by a broadcaster and a production company for widening the ecology of programme supply in an area. This is particularly important where restrictive clusters of a certain genre or type of programme develop which inhibit long-term growth. For example, in some areas we see clusters of low cost returnable programmes. This enables a certain level of growth, but if the sector in that area is to grow beyond that level diversification is necessary. The strategic relocation of a carefully selected title can enable the regional talent base to train in a different type of production and develop new skills which help that sector to break out of a restrictive cluster and diversify into other, higher tariff, types of programme. If the system is to meet its stated intention, then it is vital that the guidance allows for the strategic and pressing need to change the ecology of shows in certain Nations and Regions in order to achieve growth and build a sustainable talent pipeline.

2.10 Whilst it is not discussed fully in the consultation document, we know that reversing talent drain and ensuring the development of a sustainable talent pipeline across all levels and types of role is one of the key challenges as we look to increase production in the Nations and Regions. If we are to reverse the drift of talent towards the M25, an ecology of programmes wide enough to sustain employment is essential. This is not just about the amount of work available but the type and quality of work. A freelancer in the Nations and Regions may have year-round work, but without the opportunity to develop and build on their experience in new or desirable credits they may still feel they have to move to an areas with a larger, more varied production ecology.

2.11 Unless strategic effort is made to fill a region's ecology of output with a number of key high-end titles, progress on this front will have to wait until the IP and successful new formats are developed organically in that area. At present, the migration of the people making those kind of programmes towards a London epicentre is making that less likely. Until that changes, broadcasters and production companies should be in a position to strategically move titles including by commissioning them on the basis they move out of London, in good faith and without financial punishment to the production company. As we set out in our CfE response, *15 to 1* is a good example of where the strategic relocation of an existing commission helped to shift the studio-based quiz show bias away from London. In doing so it redirected almost £20 million of Channel 4 production into Glasgow, not to mention other broadcasters' commissions which followed.

2.12 This sort of strategic move, agreed between a broadcaster and a production company, would be significantly more difficult to achieve if production companies were faced with the prospect of having to pay for start-up costs, executives to run the regional business and senior personnel to seek commissions' speculatively, without any guaranteed business, as well as overheads like office space, phone lines and computers. Instead we would suggest that a more workable approach would be for an office to have to be open, and demonstrably meeting all three elements of the substantive base criterion, prior to the point of contract. This would ensure that broadcasters were satisfied the base was genuine ahead of entering into a contract, but would not penalise production companies by forcing them to either be open for an extensive period pre-commission or to be unable to qualify as a substantive base on their first commission. It is also a more precise, and therefore more workable solution as point of commission, or even production, risk being unhelpfully unspecific given the range of processes across different broadcasters and producers.

2.13 If, rather than making strategic interventions to reverse the talent drain to London, broadcasters wait for high-end, big audience, returnable series to be developed organically, growth will be much slower. At the present rate it will take many years for the flow of IP, and specifically those who creative it, to truly reverse. So preventing or dis-incentivising the strategic relocation of these types of commissions over that period could be very damaging to the speed of growth. As the

sector outside of London grows, such interventions will eventually become less important, but we are not there yet.

Moving programmes to new bases as part of the growth of centres of excellence

2.14 The UK is growing centres of excellence and in some cases it may make sense to both broadcaster and production company to locate or relocate shows (both new and returning) to those centres where there is more likely to be a strong talent pool for that type of production and further opportunities for freelance staff. We have seen the impact that such moves can have on a local production ecology in Glasgow, which, driven by shows like *Location, Location, Location* and *15 to 1*, became a centre of excellence for both lifestyle and quiz shows, and in Cardiff and Belfast where the huge growth in drama production has been fuelled by programmes like *Dr Who* and *Game of Thrones*. In instances where new bases are being formed which move commissions to growing centres of excellence we would want to support a move or the opening of a new base. However, under the proposed changes we would risk that programme failing to qualify under the substantive base criterion as the commission was prior to the establishment of the new office.

2.15 In order to overcome this, the new system could have the unintentional effect of encouraging production companies to establish offices speculatively without a commission, and sink resources that would be better spent on development into that office before they have a guaranteed source of income. Ultimately this makes such new bases less likely, not more likely to succeed, risking damaging long term growth and potentially contributing to the types of instance which erode confidence in the system. Requiring a company to employ a senior team in the Nations and Regions speculatively instead of simply moving a returning show to a new, natural, location not only seems punitive, but it alters the business calculations, potentially deterring them from doing what is creatively and competitively best for the business and best for the Nations and Regions production ecology. Rather, what should matter is that where new offices are opened that move is meaningful. When negotiating such a move we are rigorous in ensuring they meet all of the substantive base requirements, but we also go beyond that to ensure the aim of the criterion is embraced. For example, in one current case we have worked with the company to devise and fund a talent progression strategy to improve the wider regional senior talent pool in the region and aid the long-term success of the new base.

Enabling the optimum environment for production companies that want to move in good faith

2.16 This issue is not just about broadcasters supporting production companies that are considering moving to the Nations and Regions, it's about not punishing those that choose to do so independently, enabling them to undertake such moves under the optimum business circumstances. Particularly in the case of SMEs it would often be financially inadvisable to undertake such a move without a commission to move with. In the worst cases, doing so could cause these new bases to be in financial deficit which in turn can mean they have less money to spend on the production, hindering their ability to get the right talent, make the highest quality programme and get the biggest audience. This not only damages their business's ability to compete, but ultimately any negative impact on quality would only contribute to the long-held myth that television production in the Nations and Regions is of a lower standard than in London. It is important to note that the changes would likely have the greatest impact on small to middle sized production companies, disadvantaging them in comparison to their larger competitors, when we should be supporting these companies and their role in the growth of the sector.

2.17 To provide a more concrete example, Channel 4 are currently working with an ambitious, substantially sized, independent production company for whom a move to an English region would be natural next step due to their own evolving circumstances. However, we do not believe it would be reasonable to suggest that sustaining two offices, or relocating fully without a production to pay for initial overheads, would be a profitable business move. In cases like this where companies are considering a move – and we are currently aware of a number of examples- having a substantive base (which means overheads, infrastructure – all the things that cripple many creative businesses) *before* the point of commission, will actively discourage growing and potentially landscape-changing companies from finding what should be a natural home in the Nations and Regions.

2.18 We are already seeing that our own move to a multi-site model, with new bases in the Nations and Regions, is generating an increase in the number of production companies considering either a wholesale move or the opening of new offices. This is also reflected in PACT's recently announced decision to open a Leeds office. This is positive and should be encouraged. If we want to achieve sustainable, long term growth in the Nations and Regions we should be creating the right conditions to capitalise on this and support such moves, not potentially dampening these positive ambitions with additional obstacles or negative sentiment. Beyond presenting practical obstacles, we also believe that the changes fuel an unhelpful narrative that has developed in the sector where the opening of new offices in the Nations and Regions is portrayed negatively, and as somehow detrimental, rather than being acknowledged as making an important contribution to growth.

Does the flexibility offered by the criteria mitigate against these risks?

2.19 We understand that Ofcom believe these issues are somewhat mitigated by the flexibility provided by the requirement to only meet two out of the three criteria, suggesting that for the first commission from a new substantive base the production company would simply have to meet the other two criteria by meeting the thresholds for spend and off-screen talent. Whilst this may be the case for some companies and some types of programming, we believe it underestimates some of the challenges of making a regional production which can prevent a production company from meeting either the spend or talent criterion, and we believe it could limit companies' ability to make certain types of programmes.

2.20 For example, should a production company decide to move to the Nations and Regions as part of their long-term business strategy, and at the same time secure a commission for a high value series which involves travel abroad such as say *Unreported World*. They may be able to meet the talent criterion, but the level of cost incurred outside of the UK (and therefore effectively categorised as if London spend for the sake of the calculation) may make it difficult to meet the spend threshold. This could be a crucial commission for the company, particularly in this example where the programme is a high volume, returnable series, which we know are so key to growth. However, the broadcaster may be stipulating that the commission must be delivered regionally, something which may have contributed to the companies' decision to move. The company are opening a legitimate substantive base, and choosing to make a long term impact on the Nations and Regions production economy, but they could find themselves losing a potentially business changing commission because the changes to the criteria have made it impossible for them to deliver it as a regional production. This isn't limited to foreign travel either, it could be that the programme in question requires a substantial shoot on location within the M25 or that they have to do their post-production in London until the investment in post-production outside of the UK builds to the required level.

2.21 Alternatively, another company may be contemplating a long term move to the Nations and Regions, with a broadcaster willing to support that move with a commission on the basis it is made regionally. However, the type of programme in question might require particular skills (for example around fixed rig or studio where we know there are shortages) which they find are not currently available in the area they were considering moving to, so they may find that making this production is not possible without bringing in a certain number of London based freelancers to plug the skills gap. Making this production in the Nations and Regions could play an important role in diversifying the production ecology, and there could be opportunities for local talent to gain new skills and experience. However, if the skills shortages mean they cannot meet the staffing criterion, only the spend, and substantive base is ruled out as it is new, the changes may mean that they are not able to deliver the programme regionally. This could mean losing the commission as well as the opportunity to diversify and grow.

2.22 It is important to note that meeting the regional production quotas has had a significant, and largely positive, impact on broadcasters' commissioning strategies, but this does mean that at times the ability to deliver a programme regionally can make the difference as to whether or not a commission is green lighted. Meeting the regional production quotas is an ongoing challenge for broadcasters, and, as we voluntarily increase our own quota, the role of the geographical question in commissioning strategies will only increase. That means that the possibility of losing a commission if it cannot be made regionally is very real for production companies, something that cannot be overlooked when considering the impact of any changes.

2.23 The flexibility in the criteria was specifically intended to prevent any limitation on the types of programmes Nations and Regions companies can make. But in the case of a company who chooses to move it does exactly that. Ofcom may argue that this only applies to that first commission, but we know that one significant commission can have a huge impact on a business' trajectory. So rather than supporting companies making a positive choice to move to the Nations and Regions, this risks limiting and penalising them. Whilst it is difficult to quantify how many companies could be affected and anticipate the scale of the impact of the proposed changes, we do know that the current environment has led to a surge in the number of companies considering a move. In that context the changes risk coming at a point of maximum impact, causing - as Ofcom note in paragraph 5.20 - a potentially "chilling effect" at what should be a time of huge progress.

The value of supporting the continued increase in programmes meeting the substantive base criterion

2.24 In all of these instances, and more broadly, where programmes are made in the Nations and Regions we want to incentivise companies to make a long-term commitment to that area. Encouraging the establishment of a substantive base is a positive way to achieve this. This belief in the long-term value of establishing new bases has contributed to an increase in the proportion of Nations and Regions productions meeting the substantive base criteria and in 2017 90% of our regional spend met the substantive base criteria. In the same year 47% of programmes met all three criteria so would still qualify without a substantive base. With this in mind - given that production companies must meet two out of three criteria - making the establishment of new substantive bases more difficult and costly is likely to drive a reduction in the proportion of companies choosing to meet this criterion, as Ofcom note in the consultation document. We do not see this as a positive outcome, as, whilst we know programmes can make an important and meaningful contribution to the Nations and Regions production economy without a substantive base, we believe that encouraging the establishment of a substantive base where possible is positive for growth.

2.25 Given these concerns, we believe that the approach taken in the joint PSB guidance represent a more effective solution. This echoes Ofcom's reaffirmation that all three elements of the substantive base definition must be met, and states clearly that a substantive base must be more than just a production base. This is supported and complimented by the other proposed changes to the Ofcom guidance, which we support. However, should Ofcom see this as insufficient, we would be more supportive of an addition to the guidance which stipulated that the substantive base must be operational prior to the point of *contract* rather than commission. This would overcome challenges about defining the point of commission and would allow reasonable time for a company to establish a new base and ensure they are meeting all three elements of the substantive base criterion.

2.26 Beyond the new requirement for a substantive base to be open prior to the point of commission, we have one further concern about the changes to this part of the guidance. Ofcom have introduced a new line which states, "The production in question must be made from that substantive base." Whilst we agree with what Ofcom is trying to achieve with this addition we have some concerns about the exact wording. It should be clear that where companies have a London office and an office in the Nations and Regions, a production should not qualify if it is in reality being made from the London office. However, in the case of TV production, we would note that 'made from' is a slightly ambiguous term and this addition could be wrongly interpreted as limiting the types of programmes some smaller Nations and Regions companies can make.

2.27 Where, for example, a small company from an area with very little production wins a commission to make a programme that requires setting up a production office in another area with a larger production ecology, such as a small North Wales company setting up a production office in Manchester, the programme could be said to be being 'made from' Manchester rather than from the substantive base. Likewise, if a Nations and Regions company sets up a production office on location to film in a hospital, school or police station (as has been the case in many of our own shows) and the execs are temporarily based in that production office the production could be said to be being 'made from' that temporary base. But where their primary, or sole, permanent base is in the Nations and Regions, and the work to develop an idea, win a commission, and plan a production has been done from that base, this should clearly meet the substantive base criterion. We would ask that Ofcom take this into consideration and look at how they can avoid any unintended consequences from this addition.

3) Do you agree with the suggested explanatory notes for the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

3.1 There is significant overlap between the proposed explanatory note on substantive base and the joint PSB guidance. Whilst this alignment is broadly positive, we feel that the joint PSB guidance is more comprehensive and ask Ofcom to look at how we ensure the two sources of explanation are complimentary and do not cause added confusion. However, we do not disagree with the majority of Ofcom's explanatory notes, with the exception of the final section which relates to the new requirement that a substantive base is operational prior to commission. As outlined above, we disagree with this proposed change and would like to see both the requirement and its explanation, removed from the revised guidance.

3.2 Beyond this disagreement with the addition itself we also have concerns about the content of this section and the lack of necessary clarity about how the new requirement would work in practice. Specifically:

- Introducing a requirement for a base to have been operational prior to commission but then specifying that there is no minimum period of establishment feels contradictory. What's more, we believe this lack of clarity is likely to be unhelpful in practice as we try to have concrete discussions with production companies about what would and wouldn't qualify.
- It is unclear exactly what is meant by 'start ups'. Could this include new offices of existing companies or production companies making a wholesale move to a new office in the Nations and Regions?
- When is the 'point of commission'? When a programme is greenlighted? Or when there is initial agreement? Commissioning is a process and may include development funding, pilots etc. We would suggest that the point of contract is more specific and would overcome problems caused by variations in broadcasters' commissioning processes. This would also be in issue were Ofcom to decide to use point of production. It would be important that this was clearly defined.
- Do Ofcom distinguish between new commissions and recommissions of existing programmes?
- With regards to reporting, what specifically does the date an office opened mean? For example, does it mean opened in some form or existed in a form that meets substantive base criteria? The easiest date to pinpoint is the start of a lease but not every company rents office space initially and a base can move office. It's important to make this clear to enable consistency in reporting and compliance.

4) Do you agree with our proposed changes to the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

4.1 Channel 4 is broadly supportive of the changes to the production budget criterion. We already exclude the production fee from our calculations and include funding from third parties within the production budget so these changes articulate our current approach. As we set out in 1.1 we support Ofcom's proposal to articulate the purpose behind the criteria and welcome this addition.

4.2 However we do have some concerns around some of the specifics around travel and the treatment of overheads in the explanatory notes.

5) Do you agree with the suggested explanatory notes for the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

5.1 As set out, overall we believe that the cross-broadcaster guidance provides a more appropriate and useful exposition of how the criteria should be applied in practice. We hope Ofcom will look in detail at this document alongside our response and consider the wording, and approach within it as suggested alternative proposals. In relation to the content of Ofcom's explanatory notes, we agree with Ofcom's explanatory notes on overheads, but we have concerns about the approach to travel costs and spend outside the UK. In both of these areas we would favour the approach taken in the joint PSB guidance.

Travel costs and international travel

5.2 We agree with the sentiment in the explanatory notes that allocation of travel costs is complex, depending on a number of factors, and decisions should be taken with reference to the policy intent. We also appreciate that Ofcom have tried to find a simple solution. However, we are concerned that Ofcom's explanatory notes on this don't provide the necessary clarity or simplicity and may actually be unhelpful, placing an undue burden on production companies and effectively make

allocating travel costs to London the default. What is important here is that any changes further the intention of the criterion, are clear and workable, and do not place an undue burden on production companies.

5.3 At present, as no travel costs are excluded from the percentage of spend calculation, any cost not defined as regional is effectively allocated as London spend, thereby skewing the overall balance of spend picture. Whilst the inclusion of 'local travel' within regional spend is an attempt to recognise that some travel costs may legitimately be counted as regional spend, it is unclear exactly what that means in practice and we believe this risks being too narrow. Indigenous production companies will also have pan UK and international travel costs, which have no link to London, but will be allocated as such.

5.4 Instead we would ask Ofcom to consider the approach set out in the joint PSB guidance where the origin of a journey is used. We believe this is simple enough to be workable and avoid undue burden on production companies in analysing and categorising every element of cost.

5.5 We are also concerned that all international spend effectively being categorised as London spend penalises companies whose productions require overseas spend. We have recently worked with a company making a drama production where the majority of the UK spend was regional, indeed in reflection of that, they secured additional funding through a Welsh Government scheme. However, the production did not meet the criteria, and could not be recognised for contributing to Channel 4's impact in the Nations and Regions, as they also incurred overseas spend which meant they did not reach the 70% target. Given that the absolute value of spend on dramas is significant, this production may have actually had a much higher spend in Wales than many productions which do meet the criteria, however this contribution is not being recognised under the current system.

5.5 One way to limit this negative impact would be for spend wholly and exclusively incurred outside of the UK to be allocated to a new category of 'excluded spend' so that, rather than effectively being counted as London, it would be removed from denominator from which the percentage of regional spend is calculated. This would give a more accurate reflection of where a company achieves a percentage of spend in the UK but outside of the M25. Ofcom could also consider applying this approach to certain non-London UK travel should they reject the approach taken in the joint PSB guidance.

5.6 Finally, beyond the proposed changes, we would like Ofcom to consider how they categorise people engaged for non-speaking parts either under the BECTU/Film Artistes Association or the PACT/Equity Walk-ons Agreement for the purpose of this criterion. Whilst they are technically 'on-screen' talent, they are often sourced locally, thereby making a contribution to the local economy and production ecology in the region and should be recognised as such.

6) Do you agree that the off-screen talent criterion should remain the same? If not, please explain why, providing appropriate supporting evidence where possible.

6.1 Yes, on the whole we agree that this criterion is working well and should remain the same.

7) Do you agree with the suggested explanatory notes for the off-screen talent criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

7.1 We have concerns over the use of the term 'creative roles' and fear that this could be interpreted too narrowly, adding to ambiguity and confusion. No production functions without the

business team negotiating rates to get the best people or facilities, or negotiating with the broadcaster, and likewise no creative culture survives without the best office manager or runner. These roles are essential, but wouldn't necessarily be referred to as the 'creative roles' within a production. All roles included in the official programme budget are part of the wider creative team and should clearly be included. As such, we would ask Ofcom to consider adopting the wording used in the joint PSB guidance, which refers to 'roles directly involved in the production of the programme'. We believe this is less ambiguous. The joint PSB guidance also stipulates that service roles such as catering or security should not be included, and specifies that production companies should "take due care that their reporting in this area adheres to the spirit of the Ofcom Definitions, including when spend is incurred via third party providers/sub-contractors.

7.2 The explanatory notes also make no reference to how 'usual place of employment' should be defined. Our experience has shown this to be a difficult and contentious issue, which is why we have sought to provide further clarity in the joint PSB guidance. Given that, in our view, this is the single issue causing the most challenges in relation to this criterion we believe it is important that Ofcom also provide greater clarity. Specifically, we would ask that they make it clear that usual place of work should be used in the majority of circumstances and does not need to be a single location, but rather a geographical region in which the majority of their work takes place. A freelancer's address should only be used in cases where that freelancer's work is spread across the country to the extent that there is no single region where most of their work takes place. So for example, if a freelancer lives in a location outside the M25 but travels to different locations in London to do the majority of their work they should not be classified as regional talent for the purposes of the criteria. To do so would not be in keeping with the intentions of the criterion as whilst they may not have a usual 'place' of work, London is their usual region of work.

8) Do you agree with our proposed change to exclude self-promotional content from the calculations? If not, please explain why, providing appropriate supporting evidence where possible.

8.1 We agree with Ofcom's proposal to exclude self-promotional content from the calculations. As with any changes, such a decision should be based on whether spend on this type of content demonstrably achieves the aims of the regional production system.

9) Do you agree with our proposed changes to the allocation categories (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

9.1 We are broadly supportive of these changes and welcome the improved clarity provided in proposed new sections 9, 10 and 11. We also welcome the introduction of a 'multi-nation outside England' category, which has the potential to be beneficial when calculating our delivery against our Nations quota.

10) While we are not obliged to consult on our internal processes, we would welcome stakeholders' views on any adverse consequences we have not identified that may occur as a result of our planned changes in relation to our compliance and enforcement processes, namely:

- a) data gathering and reporting by the broadcasters;
- b) more comprehensive data publications;
- c) proactive monitoring by Ofcom; and
- d) a clear articulation of the complaints process.

a) data gathering and reporting by the broadcasters;

10.1 Ofcom have already implemented changes to their reporting processes which increase the level of detail required from broadcasters. We have changed our data gathering and reporting processes accordingly and whilst it is still too early to say, we hope this will lead to improved transparency around how the system is working. It is vital that the level of data broadcasters are expected to collect and hold is appropriate, striking the right balance between improving transparency and deepening insight into how the system is working, whilst also managing sensitivities around commercial or personal data, and avoiding unnecessary or damaging burden upon smaller production companies.

10.2 Ofcom state in the consultation document that warranty or declaration from suppliers alone is insufficient for compliance. However, we believe that a system where warranty and self-declaration is supported by spot checks, detailed conversations with production companies, and increased data collection is sufficient. Particularly alongside greater alignment from broadcasters around these processes, and clearer guidance on how the criteria should be applied. We are concerned that Ofcom's comments in the consultation document about each PSB working with their suppliers to develop new and improved systems for compliance are both an unnecessary addition, and a potential hindrance to the greater alignment we are trying to achieve. We would also emphasise that a degree of trust is essential in the relationship between broadcasters and production companies and fundamental to the functioning of the system. Ofcom should take care not to erode that by promoting a narrative that suggests that warranty, and self-declaration hold little substance.

b) more comprehensive data publications;

10.3 We welcome Ofcom's overhaul of their data publication and their decision to publish the quota data and the register together. Improvements in this area were something we advocated in our response to the CfE and we hope the changes will give added transparency and help to improve confidence in the system.

10.4 We would ask that as Ofcom develop their plans they ensure a continued dialogue with broadcasters about what additional data is valuable and appropriate.

c) proactive monitoring by Ofcom;

Spot checks

10.5 We believe that spot checks can play a valuable role in the regional production system and Channel 4 already carries out a number of spot checks a year using a specialist external company. As such we are in principle supportive of this measure, but would emphasise that getting the detail right to ensure workability and proportionality is key.

10.6 Ofcom acknowledge that in many cases broadcasters are reliant on the provision of data from third parties, and for Channel 4 - as a publisher broadcaster with no in-house production - this is the case for every production. As we have set out above, it would not be appropriate to hold detailed, sensitive information on each of these productions, which is one of the reasons our own spot checks are done by an external provider. As such we would ask that Ofcom work with us, as well as with the other broadcasters, to ensure that the time frames for spot checks are realistic and allow time to gather the necessary data, and that the processes allow for sensitivities around the sharing of certain data in light of data protection and commercial questions. This may also require more

detailed consultation with production companies, PACT and the Indie Club given both the additional burden on producers and the type of data involved.

10.7 We would also like more clarity from Ofcom about exactly what data they will request, including, if necessary, the opportunity to discuss how the more qualitative elements of compliance, which are largely based on detailed conversations with production companies, can be appropriately documented without disproportionate burden.

Survey

10.8 If Ofcom are to undertake a survey to better understand the regional production landscape, further consultation and collaboration with broadcasters and the wider sector will be crucial to ensure that the resource involved, and eventual output, generates the greatest value and justifies the additional burden on broadcasters and production companies. Both the PSBs and PACT have undertaken research and analysis of their own, as have other industries bodies. Insight from this existing work as well as from the experiences of those who are working on the ground to increase regional production and address skills gaps, should be the starting point if Ofcom are to avoid duplication and successfully further understanding. Given the centrality of issues around developing a sustainable talent pipeline across the Nations and Regions, this may be one area where Ofcom resource can have the maximum positive impact.

10.9 There are also questions about the timing of such a survey, *after* Ofcom's extensive review and the changes to the system which result from that, and at a time of huge ongoing change in the sector. As Ofcom acknowledge in the consultation document, Channel 4's 4 All the UK strategy, and the new BBC Scotland Channel will be catalysts for real change, and whilst they are still in their early stages, their impact is already being felt. In light of this, the rationale and objective behind a survey needs to be clearly articulated and decisions made on that basis.

d) a clear articulation of the complaints process.

10.10 We share Ofcom's assessment that a clear route for complaints and a consistent process for responding can help to improve confidence in the system. Whilst it is unusual for this to sit in the guidance itself we understand Ofcom's rationale for doing so. Were there to be any major changes to how Ofcom deals with complaints, with a likely impact for broadcasters, we would hope to have the opportunity to consult on this. However as we understand it these changes are about providing clarity around the existing complaints process and ensuring Ofcom have a robust internal process for responding to complainants. The requirements from broadcasters around data provision will remain the same.

11) Do you agree with our proposal for the new Guidance and majority of changes to take effect from January 2020?

11.1 We do not believe that it is realistic, or proportionate for the changes to come into force from January 2020. When considering implementation timings and their impact, it is vital to understand the nature of commissioning cycles and the concurrent planning which goes into delivering against the out of London and out of England quotas. Because programmes are commissioned well in advance, with, for example, a large proportion of 2020 commissioning budget and a proportion of the 2021 budget already allocated, changes which come in from 2020 are in effect, retrospective. Many of these programmes will already be well into production, warrantied as regional and working to deliver that on the basis of the current criteria. The changes to substantive base are particularly problematic in these cases.

11.2 Furthermore, there are certain types of programme where this problem will be more acute. Series like *Grand Designs* or *Escape to the Chateaux* which involve the building, renovation or restoration of properties have to be filmed over an extensive period, and can be considerably delayed, in many instances over a year, making it even more likely that they transmit under a system that has changed since they were commissioned and contracted.

11.3 Any changes to the data Ofcom expects PSBs to routinely collect and hold for compliance purposes, and to provide in the case of the new spot checks, will also require system changes as well as communication to production companies. Even small changes can require significant work to change or update systems. It is difficult to estimate how long these changes would take to implement without more information about the detail of Ofcom's proposals. However, what is clear is that broadcasters cannot begin to plan or implement these changes until they have those specific details, so the implementation period should be ascertained in consultation with broadcasters, based on when those specifics will be available.

11.4 These issues will apply to all of the PSBs, but in the Channel 4 case specifically, we are currently in the process of implementing our 4 All the UK strategy, which was developed on the basis of the current system. Changes to the system will be particularly disruptive in this context and we would ask that Ofcom works with us to develop a timetable that does not hinder or disrupt our strategy.

11.5 We would suggest that to be workable the implementation date must either be significantly later or it should apply to programmes *commissioned* from January 2020 as opposed to programmes transmitting from that point.