

Question	Your response
<p>1) 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).</p>	<p>Confidential - N</p> <p>Yes, we are in general agreement with the obligations as outlined.</p> <p>Where these have previously fallen down is the areas of ambiguity and looseness of definition. Unfortunately, this has allowed broadcasters to let projects qualify which really shouldn't. In future this can be minimised by tightening the definitions and in more rigorous auditing.</p> <p>This fact is underlined by Ofcom's own research – Page 23 of the Consultation, <i>Review of Regional TV Production and Programming Guidance</i> – notes, "MOL commissions from locally headquartered producers in Scotland accounted for around 25% of total Scottish MOL hours in 2017."</p> <p>Accordingly, 75% of the made out of Scotland's commissions are made by producers it is reasonable to presume are headquartered in London.</p>
<p>2) 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.</p>	<p>Confidential? – N</p> <p>Yes,</p> <p>but it is a sad fact that broadcasters and some London based production companies have used the looseness of the criteria to circumvent its clear intentions.</p> <p>In the past the broadcasters have allowed, possibly encouraged, producers to declare a "substantive base" simply because a development producer or a production manager was located at a desk in Scotland.</p> <p>It is certainly true that the substantive base criteria can be fulfilled by a single person and once that is fulfilled, under these rules, it is possible to have no spend within the</p>

	<p>nation/region.</p> <p>We would therefore suggest Executives managing the regional business could be beefed up to include ‘with independent decision-making ability’</p> <p>That existing, non-start up companies, and those opening as branches of existing production groups or London based companies must have the roles fulfilled by more than one person.</p> <p>Ideally, a further category of evidence of permanent business functions, would apply to new production companies of already established Groups or Labels.</p> <p>The important point here as that whilst not precluding a London executive from gaining a commission that is then made in Scotland and provides revenue, jobs and experience locally, any new company must show at least an ambition to be a permanent entity. Not a temporary outpost.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Yes. We entirely agree with this. However as the Substantive Base appears to unlock 100% of spend allocated to a nation/region, this criterion and guidance needs to be robust, and should initially have its efficacy reviewed annually.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>No. We do not agree with all of the changes to the production budget criterion.</p> <p>Inclusion of funding from third parties is welcome as this then represents the totality of</p>

	<p>that production budget. However it should be clearly noted that when third party funding is allocated to a foreign co-producer, especially under treaty terms, this would not be included in the calculations.</p> <p>This may seem obvious and that it might be assumed, but lack of detail and consequent ambiguity has been one of the historical problems with the guidance.</p> <p>Production fee <u>should</u> be included in the 70% calculation, so that if a company is properly registered in a nation and region the spend would go to that nation/region. If the company is based within the M25 then that fee would count in the M25. The fewer budget elements that are taken into account in calculations, the easier it is for companies to fudge qualification.</p> <p>Plus in many business models the production fee is the part of the budget that ultimately gets spent on developing further programming/ideas, or unfortunately gets spent making the programmes</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Yes.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Yes we agree in terms of the 50% allocation.</p> <p>However there needs further tightening and clarification of ‘usual place of employment’ and would question whether people should count ‘if they live outside the M25’.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Yes, but we need clearer guidance on what constitutes Usual Place of Employment and disagree with qualifying ‘if they live outside the M25.’</p>

	<p>It is fairly usual practice for London production companies to employ people who live outside the M25 but are nonetheless required to work in London offices or post production facilities. London itself has many workers, in many fields, who regularly commute from outside the M25.</p> <p>Allowing production that is supposed to grow the nations/regions sector to remain firmly in London by temporarily importing workers from further afield does not serve the purpose of these guidelines.</p> <p>As we realise that it is difficult to be completely prescriptive, is there an argument for Usual Place of Employment requiring a contract of say more than 6 months, and qualifying by domicile (rather than where the production is based) only if specifically contracted to work away from that base eg always filming on location.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>Yes.</p>
<p>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.</p>	<p>Confidential? – N</p> <p>As mentioned previously, the substantive base criteria could be fulfilled by a single person and once that is fulfilled, under these rules, it is possible to have no spend within the nation/region (see attached spreadsheet). This cannot in anyway be deemed <i>to deliver genuine investment in TV production</i> in that Nation/Region. There must be a minimum spend in the second category chosen, so for instance, if the company were relying on the Off Screen talent criteria to fulfill regionality, at least half of the 50% should be spent in that nation/region.</p> <p>The guidance cannot achieve its aims to grow sustainable production industries in the nations/regions without money being spent and people being employed there.</p> <p>The attached spreadsheet was supplied by the BBC to a producer in Scotland. It was sent in October 2018 by “BBC Commissioning News”</p>

	<p>with the subject headline, “Out of London production – changes to reporting and compliance”.</p> <p>One of the recipient production companies ran a test on the form, they clicked for a substantive base in Scotland but allocated all spend elsewhere in the UK. The spend was OOL but in a different macro-region to the substantive base so the form – like the proposed new wording in the Consultation – allocated 100% of the project’s value to Scotland.</p> <p>When the producer who received the form questioned its outcomes the BBC responded: “this is an Ofcom rather than a BBC methodology”.</p> <p>We totally disagree that the methodology should allow such an outcome.</p>
<p>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:</p> <ul style="list-style-type: none"> 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. 	<p>Confidential? – N</p> <p>One of the clear flaws in Ofcom’s system for OOL to date has been the lack of ownership within Ofcom of the OOL system in the face of any query or complaint.</p> <p>Questions have been raised about various projects commissioned by both the BBC and C4 over the years and who was responsible for the investigation and conclusion of these questions or complaints has never been made clear.</p> <p>The time spent considering each question or complaint raised has also been both too long and considerably variable, with some taking 12 months + to resolve. This seems contrary to any concept of due process and incapable of delivering any practicable outcome.</p> <p>A clear, reasonable process and timeline for the raising and resolution of complaints should be set out by Ofcom. The role within Ofcom with responsibility for the complaints process should be identified and the consequences of any breach by a commissioning broadcaster made clear.</p> <p>One outcome that we would not see as</p>

	<p>purposeful would be the issuing of fines against broadcasters. The cost of those fines would likely only be set against programme budgets in subsequent years. Instead we would recommend that the value lost to the quota as a result of the mis-allocation of a project against an OOL quota be added back into the OOL commissioning budget for the following year.</p> <p>For example, if a project has a production budget of £100,000 and this is incorrectly set against the Scottish commissioning quota for 2019 it should be added back into the Scottish quota target for 2021 (likely the first-year post publication of the OOL Register for 2019 that could be adjusted following the raising and resolution of any complaint).</p>
<p>11) Do you agree with our proposal for the new Guidance and majority of changes to take effect from January 2020?</p>	<p>Confidential? – N</p> <p>Yes, broadly, but with the clear reservations set out above. We do not think that the new guidance offers the hoped-for clarity necessary to deliver Ofcom’s stated aims.</p>