

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>No, while the proposed changes provide some much-needed clarification of the purpose of the obligations we feel they do not articulate the purpose of the Guidance, the aims it seeks to foster and engender, with enough clarity.</p> <p>The figures published in this consultation clearly show that London dominates out-of-London production. That London-to-London commissioning is the norm for UK PSBs and that the value-chains in UK television production and distribution are overwhelmingly owned by London based businesses.</p> <p>Ofcom must ask if the results generated over the last five-to-ten years by the current MOL quota system deliver the outcomes Ofcom seeks - the development of independent, end-to-end production ecologies in the nations and regions?</p> <p>Ofcom must also ask itself if it is confident that the proposed changes detailed in Annex 7 will alter these outcomes and deliver, “the development of independent, end-to-end production ecologies in the nations and regions”?</p> <p>Our belief is that they will not, that London-to-London commissioning will remain the norm, that MOL commissions from locally headquartered producers will remain at low levels and that the valve of UK television production will continue to attach to overwhelmingly to London.</p> <p>While the new wording in Para. 3 regarding the aim of the obligations being to support the creative economies of the UK’s nations and regions is welcome it is not robust enough to deliver genuine and much needed change in the commissioning process or the value chains of UK production.</p> <p>However, to alter these outcomes and deliver independent, end-to-end production ecologies in the nations and regions we do not think that the current system need be changed much more than is already suggested. The addition of further guidance and clarification around the aim - “the development of</p>

independent, end-to-end production ecologies in the nations and regions” – and the meaning of key words in the current criteria (“senior”, “usual place of employment”) would do much to deliver deeper and more sustainable change.

In the context of Q1 for example we would recommend the following additional guidance (alongside the changes recommended elsewhere in this response):

*3. The aim of the regional production obligations is to support and strengthen the television production sector and creative economies of the UK's nations and regions. The regional programming obligations also aim to help strengthen the television production sector in the nations and regions, while ensuring that audiences have access to programmes which are relevant to them and about their local communities. The broadcasters should keep this in mind when having regard to the Guidance, commissioning content from locally headquartered producers as a priority and supporting the development of independent, end-to-end production ecologies in the nations and regions.*

The aim should be that over the next two to five years the balance shifts so that more MOL quota content is made by and owned by locally headquartered producers in the nations and regions.

We recognise that this will take time, that capacity needs to be fostered in the nations and regions so that the PSBs have confidence in the MOL supply base.

But change needs to be seen to be believed. If the new Guidance, once implemented, does not redress the balance so that MOL commissions from locally headquartered producers in Scotland does not account for 50%+ of total Scottish MOL hours in 2020/21 or 2021/22 at the latest it will require further interventions from Ofcom.

The remainder of this response to Q1 unpacks why that is our belief.

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PACT's research has previously identified that “the primary beneficiaries” of the current OOL system are

the bigger indies and the NQIs – particularly BBC Studios/BBC in-house. The majority of these are head-quartered outside of Scotland.

In the paper *Building a Sustainable Independent Production Sector in Scotland – A PACT Report* (<http://www.prosperostrategy.com/9161472956/wp-content/uploads/2016/02/Prospero-Scottish-Production-Report-for-PACT.pdf>) PACT demonstrated that most of these “primary beneficiaries”, “... are subsidiaries set up by larger groups; some of which are well-entrenched and core to the Scottish production sector; others are less well established, and a small number come up to Scotland just to produce a particular programme or series.”

That the “primary beneficiaries” of the Out of London quota system Ofcom has presided over since the Communications Act 2003 became law are London based production companies and groups is clear evidence of a failure to deliver to date by Ofcom against these outcomes.

This is underlined by Ofcom’s own research – Page 23 of the Consultation, *Review of Regional TV Production and Programming Guidance* – notes, “MOL commissions from locally headquartered producers in Scotland accounted for around 25% of total Scottish MOL hours in 2017.”

Accordingly, 75% of the “Scottish” MOL commissions are made by producers headquartered elsewhere, presumably the majority in in London.

The O&O Report (Regionality trends within the UK production sector A report for Ofcom by Oliver & Ohlbaum Associates Ltd September 2018) notes:

- (a) that while, “The total revenues of nations and regions producers are broadly growing, from £241m in 2015 to £269m in 2017, a diminishing share is coming from indigenous out-of-London companies,”;
- (b) “When accounting for the location of the head offices of large production groups (rather than the location of subsidiaries), the share of PSB network originations being made by London-based or global companies goes up to nearly 90%.”

These figures show – clearly – that the current

system has not spread the value and economic/creative opportunity of television across the UK to the extent it would be reasonable to expect by 2019.

London and production companies head-quartered in London remain the primary beneficiary of the MOL policy and process. London-to-London commissioning remains the norm for the PSBs.

As all quotas act as a ceiling rather than a floor (broadcasters commission up to quotas, rarely beyond them by any significant measure) this meant the value of the OOL production market was capped and growth of “viable production ecologies outside the M25” was hindered rather than fully promoted.

A clear guidance statement from Ofcom setting out the overall aim of “the development of independent, end-to-end production ecologies in the nations and regions” would provide clarity against which all future PSB MOL commissioning decisions could be measured.

The question though will always be how sincere the commissioning broadcasters are in achieving those outcomes?

How much – for example - does a new commission have to support and strengthen the television production sector and creative economies of the UK’s nations and regions before it should be set against the OOL quotas?

And as a “substantive base” is the trump card that can unlock 100% allocation of spend against a macro-region how are qualifications like “senior” and “usual place of employment” to be interpreted.

As you will see from the remainder of this response Ofcom’s currently proposed amendments allow for a significant degree of “flexibility” and while useful in many ways such flexibility has been used in the past by commissioning PSBs to encourage London based producers to shift new projects MOL.

That shift brought a short-term gain of jobs but long-term such moves suppressed the viable and sustainable growth OOL of “end-to-end production ecologies in the nations and regions”. “Assembly plants” that see elements of production undertaken

	<p>in the nations and regions while all of the value, IP and career progression opportunities remain in London are not purposeful in delivering end-to-end production ecologies in the nations and regions.</p> <p>As detailed in this response we think more clarity of purpose and direct action is required by Ofcom than it is currently proposing. We welcome the commitment to, “consider whether further regulation is necessary” if “after recent market developments have had time to bed in... not enough progress is being made in this area”.</p> <p>For this reason we are proposing both the further changes outlined in this response and that the outcomes delivered by the new Guidelines be measured every second year to determine if the commissioning decisions of the PSB’s are now supporting and strengthening Ofcom’s aim - “end-to-end production ecologies in the nations and regions”?</p> <p>If they are not – if, for example, the majority of “Scottish” commissions are still not made by locally headquartered producers in Scotland - then further remedial action may be required by Ofcom to deliver the “end-to-end production ecologies in the nations and regions” Ofcom desires.</p> <p>The current, sustained and very one-sided mismatch between the increased share of programming produced in the UK’s nations and the economic impact/value of that production attaching to London will remain the key measure of success or failure for the aims stated by Ofcom.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>No. We do not agree that the proposed changes will support the development of, “end-to-end production ecologies in the nations and regions” as they lack clear guidance as to what constitutes “senior” and what the phrase “usual place of employment” means.</p> <p>As achieving “substantive base” status unlocks 100% allocation of a project’s budget against the relevant macro-region quotas this is inadequate, lacking in clarity and purposefulness.</p> <p>“Senior” should be limited to key decision-making</p>

roles; roles with operational independence like a programme's executive producer, a company's managing director or development executive.

The second and third roles listed in the definition of substantive base should also be editorial roles – creative roles – rather than logistical “production management” roles. It is those editorial brains that devise and win commissions, not production managers.

“Usual place of employment” should be where the work is undertaken, not where the individual lives.

We would recommend the following alterations:

Criterion a): Substantive base

*The production company must have a substantive business and production based in the UK outside the M25. The production in question must be made from that substantive base. The base should already be operational prior to the point of commission and will be taken to be substantive if it is the usual place of employment (where the relevant role is located) of: i) senior, operationally independent executives managing the regional business; and ii) senior, operationally independent editorial executives managing the production in question; and iii) senior, operationally independent executives involved in the development of new programme commissions.*

Background to this response...

“Usual Place of Employment”

The attached recent job advert for 999: *What's Your Emergency* from popular recruitment site The Talent Manager (<https://www.thetalentmanager.com/tv-jobs/26740/regional-edit-producers-999-whats-your-emergency>) shows how the current lack of clarity over “usual place of employment” can deliver outcomes that do not align with the aim of building “end-to-end production ecologies in the nations and regions”.

In this instance the Edit Producer role on 999 is stated as being located in London but the project as a whole is a “regional production” – so applicants are asked to have a base/live outside the M25. Which location constitutes “usual place of employment”? Is it where the edit-producer lives or where the advertised role is based? This confusion frustrates

	<p>positive, purposeful action by producers who simply want to win business and comply with the rules.</p> <p>As the attached screen grab from TV job site <i>Talent Manager</i> for “999 What’s Your Emergency” illustrates the current lack of clarity drives perverse outcomes - edit producers from outside the M25 are required to travel into London to take up jobs on a “regional project”. That is not helpful when it comes to developing, “end-to-end production ecologies in the nations and regions”. The production work is undertaken in London by talent that has been removed from the OOL production ecology.</p> <p><u>Senior</u> We also believe that senior personnel can only be considered “senior” if they enjoy a degree of “operational independence”.</p> <p>For example, the Exec. Producer is the person with overall editorial control (subject to that of the commissioning broadcaster) on any production and is also the key point of contact for the commissioner within the production company – commissioners buy ideas from executive producers, not from production executives.</p> <p>The current Ofcom MOL regime has seen many Exec Producers remain in London, perpetuating London-to-London commissioning. This diminishes the talent pool Out of London, undermining long-term viability of production centres OOL. When broadcasters bemoan the apparent “lack of talent” outside of London what they often mean is the lack of trusted executive producers outside of the M25.</p> <p>Current Ofcom Guidance on OOL enables the retention of key editorial roles like the Exec Producer within the M25 on many OOL projects, exacerbating the “lack of talent” concern and undermining the aim of building viable production ecologies outside the M25.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>No, while this note provides aims against which projects can be measured it remains unclear and open to abuse. As it stands it is unlikely to deliver “end-to-end production ecologies in the nations and regions” enough to ensure that MOL commissions from locally headquartered producers in Scotland</p>

	<p>account for 50%+ of total Scottish MOL hours in 2019/20 and beyond.</p> <p>Because of the lack of clear guidance elsewhere in the definition of “substantive base” – see our responses to Q1 and Q2 - we feel a review of the outcomes delivered by this new guidance every two years is required to determine if the new OOL regime is fostering the growth of “end-to-end production ecologies in the nations and regions”.</p> <p>We would recommend the following additional changes to the criterion:</p> <p><i>Aim: The objective of this criterion is to support the development of independent, end-to-end production ecologies in the nations and regions and to embed TV development and production in the nations and regions to achieve a degree of permanency in those production ecologies. We consider that to satisfy this criterion, the company making the title will have an authentic operationally independent presence in the nation or macro-region in which it has its office and will be developing and producing content from the substantive base, employing staff at all levels from the local area and contributing to that local area’s creative economy on an ongoing basis.</i></p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>No, we do not agree with each 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 that production.</p> <p>However, the exclusion from the calculation of any element of production fee will only enable more productions based in London to qualify as OOL as it reduces the overall value of the production budget against which the 70% figure is calculated.</p> <p>It is also a significant concern that full allocation against the macro-region of the claimed substantive base is possible under these rules while no element of either the 70% or the 50% criterion is met within the macro-region of the claimed substantive base – provided those targets are met outside the M25.</p> <p>Full allocation should not be possible without at least half of each of these criterion being met in the</p>



macro-region of the claimed substantive base. These minimum thresholds should always be possible as, now, the “production in question must be made from that substantive base”.

We would recommend the following additional amendments:

*Criterion b): Production budget*

*At least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money, and copyright costs ~~and any production fee~~) must be spent in the UK outside the M25 with a minimum spend in the macro-region of the claimed substantive base of at least 35% of the production budget. For the purposes of this calculation, any funding from third parties should be included as part of the production budget.*

*Aim: The objective of this criterion is to deliver genuine investment in TV production outside of the M25. We consider that to satisfy this criterion, a supplier should be making a significant financial contribution to the creative economy in the macro-region of the claimed substantive base - for instance, through the use of local or regional production talent and/or related facilities.*

Production Fee

If this OOL regime is about embedding TV production in the nations and regions to achieve a degree of permanency that can stimulate and build viable production ecologies outside the M25 then the production fee must be part of the calculation of value/economic impact each project delivers. Production companies based outside of London rely on the production fee to support their office overheads and development costs – overheads and development work which are based OOL and which constitute a cornerstone of any viable “end-to-end” OOL production ecology.

Also, as a production fee is often sacrificed to ensure a production is fully funded (either at the outset or as overcosts are incurred in other budget lines) at what point is a production fee calculated and recognised?

Is it at the end of a project (the only point at which that value can safely be recognised as a production fee) or in the original budget, drawn up before filming starts? This is a secondary point, the primary

	<p>point is that if you want to built a business OOL you have to invest your production fee OOL in infrastructure and jobs that are based OOL.</p> <p>For this reason production fee should not be excluded from the 70% production budget criterion.</p> <p>It is also a significant concern that no element of the 70% criterion need be met within the macro-region of the claimed substantive base.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>Please see response to Q4.</p> <p>We recommend the following additional amendments:</p> <p><i>Criterion b): Production budget</i>  <i>At least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money, and copyright costs <del>and any production fee</del>) must be spent in the UK outside the M25 with a minimum spend in the macro-region of the claimed substantive base of at least 35% of the production budget. For the purposes of this calculation, any funding from third parties should be included as part of the production budget.</i></p> <p><i>Aim: The objective of this criterion is to deliver genuine investment in TV production outside of the M25. We consider that to satisfy this criterion, a supplier should be making a significant financial contribution to the creative economy in the macro-region of the claimed substantive base - for instance, through the use of local or regional production talent and/or related facilities.</i></p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>No, we think there should be an obligation to hire off-screen talent in the macro-region of the claimed substantive base (not just outside the M25) and that the phrase “usual place of employment” requires additional guidance (please see answer above to Q2).</p> <p>We would recommend the following amendments:</p> <p><i>Criterion c): Off-screen talent</i></p>

	<p><i>At least 50% of the production talent (i.e. not on-screen talent) by cost must have their usual place of employment in the UK outside the M25 with a minimum of 25% having their usual place of employment within the macro-region of the claimed substantive base. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25 and their role on the production is outside of the M25.</i></p> <p><i>Aim: The objective of this criterion is to ensure genuine creative job opportunities in TV production in the nations and regions and within the macro-region of the claimed substantive base. Developing talent from within and attracting talent to those areas can in turn help to create strong regional production centres.</i></p> <p><u>Additional Note:</u> We would add that in many instances where a nations-based producer is making content for the UK network this is the only criteria (other than substantive base) that can be met on a UK network commission. The 70% spend criterion is often unachievable on a network project that will likely film in London as well as within the nations and regions or internationally. For this reason, and because our team is unambiguously based in our Glasgow office (our genuinely substantive base) we can always meet the 50% test, but not always the 70% criterion.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>No, please see answer to Q6.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>Yes.</p>
<p><b>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.</b></p>	<p>Confidential? – N</p> <p>The concern which first prompted producers in Scotland to raise questions about productions listed in the Ofcom MOL Register was that many of those projects listed as “Scottish” consumed significant volume and/or value from the Scottish quota with very little apparent production activity in Scotland.</p>

They were not obviously purposeful beyond meeting the letter of the quota, they took away from our sector without adding value to that sector by providing sustainable work to those who seek to build viable careers in Scotland.

So long as “substantive base” unlocks 100% allocation of a project’s budget against a macro-regions quota even when the production activity relating to that project takes place elsewhere this will remain a concern. For this reason we are suggesting in our answers to Qs 4-7 that allocation to the macro-region of a claimed substantive base can only take place when the spend and talent criterion include a significant proportion of spend in and/or talent from that macro-region.

While the changes proposed by Ofcom to the allocation categories clarifies their impact it does not prevent 100% allocation against one macro-region even where there is no or very low levels of production activity in that macro-region.

The attached spreadsheet was supplied by the BBC to a producer in Scotland. It was sent in October 2018 by “BBC Commissioning News” with the subject headline, “Out of London production – changes to reporting and compliance”. The form accessed via this email was clearly marked as a “test”, it is attached to this submission.

One of the recipient production companies ran a test on the form, they clicked for a substantive base in Scotland but allocated all spend and talent elsewhere in the UK, to a different macro-region to that of the substantive base. The form – like the proposed new wording in the Consultation – allocated 100% of the project’s value to Scotland, the macro-region of the claimed substantive base. When the producer who received the test form questioned its outcomes the BBC responded: “this is an Ofcom rather than a BBC methodology”.

100% allocation against one macro-region should only be possible where there is a clear substantive base AND purposeful economic activity (spent or employment of talent) in that macro-region. To enable flexibility we are proposing that half of each criterion relied upon be met within the macro-region of the claimed substantive base.

	<p>It is up to Ofcom to decide if the current allocation guidance is purposeful in delivering “independent, end-to-end production ecologies in the nations and regions” or, instead, in perpetuating outcomes that see “locally headquartered producers in Scotland account[ing] for around 25% of total Scottish MOL hours”.</p>
<p><b>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:</b></p> <ul style="list-style-type: none"> <li><b>a) data gathering and reporting by the broadcasters;</b></li> <li><b>b) more comprehensive data publications;</b></li> <li><b>c) proactive monitoring by Ofcom;</b></li> <li><b>and</b></li> <li><b>d) a clear articulation of the complaints process.</b></li> </ul>	<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 within Ofcom 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 purposeful would be the issuing of fines against broadcasters that reduce commissioning 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>

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

Confidential? – N

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.

As a result we would propose an early comprehensive review of the outcomes the new guidance delivers and remedial action thereafter by Ofcom to further clarify the OOL guidance to ensure delivery of the stated aims set out so clearly, and helpfully, in the revised Guidance.

## Regional Edit Producers: 999: Whats Your Emergency?

DESCRIPTION	<p>We are looking for experienced Edit Producers to work on the next series of '999: What's Your Emergency?' for Channel 4. You must have at least 3 x edit producer credits on 60' observational documentaries, for prime-time Channel 4 or BBC. Experience should preferably be on accessed based programmes that follow the work of the emergency services such as; '999: What's Your Emergency?', 'The Met', 'Hospital', 'Ambulance' &amp; '24 Hours: In Police Custody'</p> <p>Each edit is 8 weeks, with a variety of start dates from end of February through to July 2019.</p> <p>This is a regional production so you must have a base/live outside the M25. PLEASE INCLUDE YOUR FULL AVAILABILITY IN YOUR COVER MESSAGE.</p>
COMPANY NAME	<a href="#">SIGN IN TO VIEW</a>
CHANNEL & TIMESLOT	Channel 4, 9pm
LOCATION	London
POSTED ON	31st Jan 2019
APPLY BY	28th Feb 2019

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