

Ofcom's Review of Regional TV Production and Programming Guidance **– a response from the Welsh Government.**

The Welsh Government welcomes the opportunity to respond to this consultation. We note that its purpose is to examine proposed changes to the guidance Ofcom issues to Public Service Broadcasters (PSBs), to assist them in properly complying with the quotas set for them by Ofcom for regional productions (i.e.; network programmes made in the UK but outside of the M25) and regional programming. The consultation is not about the levels of the quotas applied by Ofcom, which are consulted upon separately when the operational licences for the PSBs are reviewed.

That being said, it is important to reiterate here our strong view that a number of these quotas are themselves inadequate and do not encourage the PSBs to deliver sufficient levels of activity in and for the nations and regions of the UK, including Wales. Although we welcome this review, as we noted in our response to Ofcom's draft Annual Plan for 2018-19¹:

“improvements in Ofcom's guidance... about what qualifies as out of London activity will only deliver significantly improved outcomes for the nations and regions if the fundamental flaws in the production quotas you have set are also addressed”

We set out our concerns in more detail in the Annual Plan response mentioned above and also in our response to Ofcom's consultation on the first BBC Operating Licence². We would urge Ofcom to revisit the levels of these quotas as a priority.

We are broadly content with the substance of the proposals set out in this consultation to strengthen and clarify the guidance, which do address a number of the issues companies and industry bodies raise with us. There are some points raised by stakeholders which we do feel warrant further consideration or investigation, and some additional changes we would suggest to the guidance before it is finalised. We will set these points out below, in answer to the consultation questions.

Q1) Do you agree with our proposed change to articulate the intention of the regional production obligations at the start of the Guidance?

We agree that the inclusion of an upfront statement of the overarching policy objective of the regional production obligations is helpful – specifically, to support and strengthen the TV production sector and the creative economies of the nations and regions. We are aware from our direct engagement with companies in Wales of concerns about the application of / compliance with current guidance in some cases. This statement is a useful reminder to broadcasters and producers of the approach you expect from them when applying the revised guidance – including clarity that it is the broadcaster who is ultimately responsible, as the licence holder, for ensuring (and where necessary demonstrating) compliance.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0025/111679/Welsh-Government.pdf

² https://www.ofcom.org.uk/data/assets/pdf_file/0016/105361/Welsh-Government.pdf

With regard to compliance, the additional data requirements and introduction of spot checks are welcome. We note that some stakeholders wanted Ofcom to go further, but given resource constraints and the additional clarity the revised guidance provides, these measures seem proportionate and fair. Ofcom should of course monitor their effectiveness and provide an update on this in due course.

We would draw your attention to the inconsistency in acknowledging that the intent of this guidance is to support the creative economies of the *nations and regions*, whilst continuing to use the definitions *regional production* and *regional programming* in the guidance itself. These definitions should be changed to *national and regional production* and *national and regional programming*, to avoid the unintended impression Ofcom has given anything other than equal consideration to the English regions and the other nations of the United Kingdom.

Q2) Do you agree with our proposed changes to the substantive base criterion?

Before responding to the specific changes Ofcom is proposing to the three main criteria for regional productions (substantive base, production budget and off-screen talent) and their associated guidance, we would note the debate across the industry, reflected in responses to Ofcom, about the level of activity required across all of these to qualify as a regional production. Although we understand the rationale behind calls for all three criteria to be satisfied in order to qualify rather than two, we accept that at present the majority (over 75%) of regional productions already satisfy the three criteria, and that mandating this for all would impact negatively on nations and regions producers who plan to meet one criterion in addition to the substantive base. On balance therefore we agree with Ofcom that the requirement to satisfy a minimum of two of the three criteria remains sufficient at present.

Turning to the substantive base criterion, we also agree with Ofcom that it is unnecessary to make the substantive base criterion compulsory, as it is already met in the vast majority of cases (approaching 90%) and Ofcom is proposing to tighten up the definition to ensure that compliance delivers lasting benefits in the nation or region. We agree with these proposals, which include new stipulations that the production in question must be made from the substantive base, and that the substantive base must be operational prior to the point of commission. We share the concerns raised by various stakeholders about “brass plate” or “pop-up” bases being set up to satisfy the letter of the current criteria without delivering any lasting presence in a nation or region. These stipulations clarify the policy intent and make it much harder for temporary bases to meet that requirement. Whilst we understand the calls for a specific time period to be added to the stipulation that a base must exist prior to commission, we are uncertain of the value of an arbitrary figure and we believe Ofcom’s advice to PSBs in the associated explanatory note addresses this point sufficiently (i.e.; that “*where the period is short we would expect producers and PSBs to be able to clearly demonstrate how the base is meeting all aspects of the criterion*”).

On a general point we note that at various points in the guidance the BBC Framework Agreement is referred to by that title or as ‘the BBC Agreement’

(including in this section). For consistency this should be corrected in the final version, using the full title throughout.

Q3) Do you agree with the suggested explanatory notes for the substantive base criterion?

We are content that the suggested explanatory notes are helpful and do address some key concerns that broadcasters and producers may have when interpreting the guidance.

We understand the calls from some stakeholders for Ofcom to be more prescriptive and quantitative than defining the 'executive' or 'senior' roles you would expect to find at a substantive base of operations, but we agree with Ofcom that jobs titles will vary by employer, by genre and over time, therefore it is more appropriate to set out a clear expectation that these will be "individuals responsible for making executive decisions and/or having a significant leadership role in relation to the production in question".

We appreciate the intent of the explanatory note on whether a Special Purpose Vehicle (SPV) can be counted as a substantive base, but in our view it should be strengthened further – we would suggest the following (our additions are underlined for clarity):

"As with any other production, the key issue for a production made from an SPV is whether the SPV meets all of the elements of the substantive base criterion. If an SPV is temporary in nature, we tend to think that it is less likely that it would be able to meet all elements of the criterion, particularly the requirements that the substantive base "should already be operational prior to the point of commission" and is 'the usual place of employment for senior personnel involved in seeking programme commissions'. Where an SPV is cited as a substantive base we would expect producers and PSBs to be able to clearly demonstrate how the base is meeting all aspects of the criterion.

Q4) Do you agree with our proposed changes to the production budget criterion?

We agree with the PSBs and stakeholders such as PACT that the 70% spend target remains appropriate, striking the right balance between being challenging and offering necessary flexibility. We also agree that the criterion should be based on the entire production budget including any third-party funding or grants, and not just 70% of the relevant PSB's contribution to the budget, to maximise the positive impact of meeting this requirement within the local production ecology. Therefore the stipulation to this effect in the proposed guidance is welcome.

We further agree that international spend should not be excluded from the calculation. We accept the point made by some stakeholders that certain genres such as sport and drama can involve a lot of international filming, making it more difficult to meet the 70% spend requirement. However, excluding international spend would potentially allow programmes filmed mainly abroad to count towards the regional production quota despite only making a very small contribution towards the

UK production sector outside of the M25. This would undermine the policy intention, which is to encourage greater spend in the UK, outside the M25.

We are concerned about the blanket exclusion of 'any production fee' from the production budget. We understand the concern raised with Ofcom that in some cases monies spent outside of London may actually be flowing back to a company base or headquarters in London. That is a problem and does run counter to the policy intent, but there will equally be cases where a production fee is paid to company genuinely based in a nation or region – and in those cases that is where the economic impact of those payments will be felt, supporting the growth of those companies. We would urge Ofcom to review this point and provide a form of words which allows production fees in cases where they can be shown to be genuinely beneficial to companies in the nations and regions.

We note the suggestion from Equity that the exclusion of on-screen talent from the production budget criterion be removed. We understand the reason this has been suggested and we of course wish to encourage drama productions to cast as many local actors as possible. That said, we agree with Ofcom (and indeed Equity itself) that doing so could skew the underlying policy intention of the quotas, given that the cost of on-screen talent is such a significant proportion of the cost on some productions. On balance we agree that, for now, the exclusion should remain in place - but this is very much the lesser of two evils, not an ideal outcome. We would urge Ofcom to investigate this area further, working with the broadcasters, the unions and other appropriate stakeholders, to see if a more appropriate solution can be found. For example, if it were possible to effectively differentiate between the budget for lead talent (where the cost per individual may be significantly above the average cost of on-screen talent on a production) and the budget for other on-screen roles, it might be possible to allow some aspects of the budget for on-screen talent to be included in a manner which encourages the casting of local talent across a production, without undermining the overarching policy objective to maximise the proportionate spend in the nation or region of all qualifying productions.

Q5) Do you agree with the suggested explanatory notes for the production budget criterion?

We are content that the suggested explanatory notes are helpful and do address some key concerns that broadcasters and producers may have when interpreting the guidance.

Q6) Do you agree that the off-screen talent criterion should remain the same?

We note the significant variation in feedback to Ofcom from across the sector about the 50% production target and whether it remains appropriate. It is certainly the case that there has been a marked increase in the volume of talent in the nations and regions since the guidance was first introduced in 2004, but it's clear that productions do still need to retain the flexibility to bring in specialist skills when required (which should also be an opportunity for training and knowledge transfer, to strengthen the local skills base).

On balance we would agree that the existing level remains appropriate for now, affording productions this necessary flexibility - but Ofcom is right to acknowledge that there have been instances where equivalent skills have been available locally and roles have still been filled with London-based talent. It is vital therefore to better understand the talent distribution on nations and regions productions, so Ofcom's intention to survey producers to benchmark the current mix of London and nations and regions talent and resources employed on these productions is welcome. However, as Ofcom also acknowledges, the PSBs and others (including the Welsh Government and the other devolved administrations) are engaging in a number of national or regional initiatives that include a renewed focus on skills, so we should expect this picture to evolve rapidly. With that in mind we would expect Ofcom to review the 50% target again fairly soon, after the further engagement with the sector that it now proposes has been concluded.

For consistency, and to ensure maximum delivery against the policy intention, we would suggest the following amendment to the criterion (our additions are underlined for clarity):

“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, prior to the commencement of their employment on the production in question. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25, prior to the point of commission of the production in question.”

Q7) Do you agree with the suggested explanatory notes for the off-screen talent criterion?

We are content that the suggested explanatory notes are helpful and do address some key concerns that broadcasters and producers may have when interpreting the guidance.

We note Equity's suggestion that Ofcom should place an obligation on broadcasters and producers to undertake at least one local casting session, to demonstrate a willingness to explore the on-screen talent in the locality of the production. Whilst we accept Ofcom's view that such a detailed, genre specific, regulatory intervention would be unwieldy and not proportionate, we also note Ofcom's statement, in response to the idea that local casting sessions be encouraged, that *“We encourage broadcasters to take account of the suggestions outlined above”*. At present this important point is buried in a document summarising responses to an earlier call for evidence. It would more helpful for Ofcom to produce a summary of such positive suggestions – those which for good reason have not been added to the criteria themselves but which Ofcom agrees would demonstrate good practice - and to include this summary as an annex to the guidance, encouraging broadcasters to be mindful of it for future productions. There are a number of points that could be captured in such a summary, some of which came directly from respondents as in this case, whilst others are Ofcom's own suggestions in response to points raised (e.g.; *“we would encourage the PSBs to review their regional production strategies to consider how they can best capitalise on... new opportunities to reduce their reliance on London post-production facilities”*).

Q8) Do you agree with our proposed change to exclude self-promotional content from the calculations?

We agree that the production of self-promotional content does little to deliver genuine or sustained economic impact, so such production activity should be excluded from the calculations.

However, in the same paragraph of the proposed guidance (point 12) the following wording has been retained:

“Ofcom accepts that it would be impractical to expect network news operations to be based outside London. News programmes are therefore excluded from the calculation.”

We do not agree that this statement is still correct and it should be deleted from the final guidance. Channel 4 has recently announced a new national HQ, to be built in Leeds. When it is operational, Channel 4’s network news provision will be co-anchored from Leeds – by definition this will be a network news operation based (albeit partially) outside London. This is a significant step forward and the other PSBs should not be discouraged from doing likewise, especially given ongoing concerns about the extent to which national and regional stories are represented and accurately portrayed on current network news services. A network news service will by definition be of sufficient scale and longevity to deliver significant economic benefits in the nation or region where it is located, so excluding network news programmes from these calculations is counter to the policy intent – especially as it is clearly now realistic for them to be delivered outside the M25.

Q9) Do you agree with our proposed changes to the allocation categories (see wording)?

We agree with the proposed changes, including the addition of the “Multi-nation / region” category. However, for consistency and to avoid confusion, this category should be renamed as “Multi-nation/English region”.

Q10) 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.**

We are content with the planned changes in this area that are set out in the proposed guidance. These appear to be proportionate to address the challenges identified and were in some cases requested by the broadcasters themselves for that reason. They should lead to improvements in the monitoring of compliance, the quality of data available to the sector and provide clearer mechanisms to resolve any issues which may arise.