



The Scottish Parliament  
Pàrlamaid na h-Alba

## Culture, Tourism, Europe and External Relations Committee

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To whom it may concern,

I am writing to you on behalf of the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee in relation to Ofcom's review of its [Regional TV Production and Programming Guidance](#).

The Committee welcomes the scope and timing of Ofcom's review. The regulation of regional TV production and programming guidance has been a recurring issue in the Committee's work in this parliamentary session and we have taken evidence on it from many stakeholders, including Ofcom and public service broadcasters, on numerous occasions.<sup>1</sup> Considerable concern has been expressed to us in that evidence about the ways in which broadcasters comply with the guidance and, as the production sector has changed considerably since 2004 when the guidance was published, we consider that a comprehensive review of the guidance is definitely required.

The Committee has most recently considered this issue as part of its ongoing inquiry into the [Scottish Screen Sector](#). The Committee held an evidence session with a specific focus on made out of London productions on 22 March 2018 in anticipation of Ofcom's public consultation. I have highlighted a number of issues that were raised with the Committee in this and other recent evidence sessions that are useful for the purposes of Ofcom's review.

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<sup>1</sup> Full details of relevant evidence sessions held by the Committee is provided in the annexe to this submission.

## Issues arising from the evidence gathered by the Committee

### *On-screen representation and portrayal of the nations and regions*

The Committee welcomes the fact that Ofcom has included this issue in its review. It is important that the content commissioned by public service broadcasters reflects diversity within the UK, including at a national and regional level. The Committee will be interested to see the suggestions that come forward on this issue as part of Ofcom's review.

### *Meaning of substantive base for production crew*

The "substantive base criterion" was a key issue raised by producers at the Committee's evidence session on 22 March. They told the Committee that the current system for determining whether a production team is "substantively based" in Scotland is not working as intended in supporting the spirit, rather than the letter, of the guidance.<sup>2</sup> The witnesses made a number of suggestions to the Committee for how this issue could be addressed.

Overall it was suggested that the level and quality of the information that production teams are required to provide to public service broadcasters should be reviewed and refined. The Committee heard, for example, that greater clarity is needed in Ofcom's guidance on the length of time that is considered adequate for assessing whether a production team has a "substantive base" in a particular location.

It was also suggested to the Committee that the substantive base criterion needs to state clearly which, or what percentage of staff, within a production company are expected to meet the substantive base criterion, as there appears to be some confusion about this in practice.

It was noted that the criterion would be more effective if it applied specifically to key post holders within a production company, such as the chief executive officer and chief operating officer - rather than more junior production staff.<sup>3</sup> This view was held on the assumption that senior management are more likely to reside in a location where a company is substantively based due to the core nature of their corporate duties and functions. By way of contrast, other more junior staff within a production company may be expected to be more mobile to respond to the filming location of the company's project work at any particular time.

The newly introduced Scottish tax code was highlighted as a particularly effective means of assessing an individual's substantive base and it was noted that this would not be a particularly onerous type of information for production companies to provide.<sup>4</sup>

### *Out of London titles register and quota reporting*

Another key issue that was raised with the Committee was the transparency of reporting on titles that are classified as being made out of London. The Committee

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<sup>2</sup> Official Report, 22 March 2018, col 3.

<sup>3</sup> Official Report, 22 March 2018, col 3.

<sup>4</sup> Official Report, 22 March 2018, col 3.

heard that it is difficult to compare titles on the register in terms of their impact in contributing to regulatory objectives because the length of a series is not captured in the register. It was suggested to the Committee that recording the number of episodes in each commissioned project and its duration would improve transparency and public scrutiny of the register.<sup>5</sup>

The Committee also heard suggestions that more financial information could be published in the made out of London register to promote greater transparency in the regulation of the sector. In particular, it was suggested to the Committee that publishing information on the overall production spend, broken down between companies that are based in different parts of the UK, could be provided in sufficiently broad terms so as to avoid issues of commercial confidentiality.<sup>6</sup>

Another issue that was highlighted to the Committee is that Ofcom requires the BBC to provide a prospective annual commissioning plan to explain its approach to meeting the quotas set by Ofcom. This approach was viewed favourably because it enables Ofcom to address any issues that arise at an early stage.<sup>7</sup> The Committee heard that it would be useful to expand this regulatory tool to the other public service broadcasters to encourage a constructive and strategic approach to meeting the regulation's objectives across the whole sector.

### *Complaints processes*

The Committee notes that the processes in place for raising complaints about the classification of programmes as being made out of London are not specifically highlighted as an area that Ofcom is intending to review in this process. This is, however, an issue that has been raised with the Committee in the evidence it has gathered and we would welcome Ofcom giving consideration to this issue in its review.

Public service broadcasters affirmed their commitment to investigating any complaints that are raised with them when they gave evidence to the Committee on 22 March. Indeed, the Committee was interested to learn that Channel 4 engages an independent external review body to assist in the review of individual complaints.<sup>8</sup>

Nonetheless, the evidence heard by the Committee suggests that aspects of the transparency and timeliness of the handling of complaints could be improved, including Ofcom's role in monitoring and investigating complaints. For example, one witness commented on Ofcom's complaints process during the evidence session on 22 March in the following terms—

At the moment, there does not seem to be a process for raising points about projects that are set against out-of-London quota, how they are then dealt with and what the outcome of that process is.<sup>9</sup>

As part of its review process, Ofcom may wish to explore how the complaints process could be streamlined so that complainants know how, and with whom, to

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<sup>5</sup> Official Report, 22 March 2018, col 15.

<sup>6</sup> Official Report, 22 March 2018, col 15.

<sup>7</sup> Official Report, 22 March 2018, col 16.

<sup>8</sup> Official Report, 22 March 2018, col 32.

<sup>9</sup> Official Report, 22 March 2018, col 5.

raise complaints so that complaints-handling across the sector is strengthened and made more transparent.

The Committee also heard evidence that Ofcom currently operates a reactive approach to regulation whereby it investigates complaints that are raised with it about programmes listed on the made out of London titles register. The Committee was told that a more proactive approach by Ofcom and public service broadcasters in the form of spot-checking the information provided by production companies would increase stakeholder confidence in regulation.<sup>10</sup>

It was noted in the evidence gathered by the Committee that public service broadcasters are to a large extent reliant on production companies providing them with accurate information. The Committee heard that the regulatory process could therefore be strengthened by requiring production companies to sign an undertaking that the information they have provided to public service broadcasters for regulatory purposes is true and given in good faith.<sup>11</sup>

### *Quotas*

The Committee also gathered evidence on the regional production quotas and how they are operating in practice. It was highlighted to the Committee that ITV does not have any quotas for making productions in the nations and it has undergone a process of significant corporate restructuring since the existing guidance was introduced. It was suggested to the Committee that this development has resulted in a level of regional production in Scotland below what might otherwise have been expected when the guidance was introduced. For this reason, it was suggested that it may be helpful for the sector in Scotland if Ofcom were to introduce quotas for ITV.

### **Next steps for the Committee**

The Committee expects to publish our final report on the Scottish Screen Sector in late June 2018. We anticipate that the final report will cover issues relevant to Ofcom's review.

In the meantime, the Committee will follow the progression of Ofcom's review with interest and we look forward to scrutinising the proposals that emerge from it in due course.

Yours sincerely,

**Joan McAlpine MSP**

Convener

Culture, Tourism, Europe and External Relations Committee

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<sup>10</sup> Official Report, 22 March 2018, col 5.

<sup>11</sup> Official Report, 22 March 2018, col 5.

**Annexe:**

**Overview of relevant evidence sessions held by the Culture, Tourism, Europe  
and External Relations Committee**

Date of meeting	Witnesses
<a href="#"><u>22 March 2018</u></a>	<p>Donald Campbell (MG Alba) David Smith (Producers Alliance for Cinema and Television) David Strachan (Tern Television Productions)</p> <p>Steve Carson (BBC Scotland) Bruce Malcolm (BBC Scotland) Bobby Hain (STV) Sophie Jones (Channel 4) Lorraine McKechnie (Channel 4)</p>
<a href="#"><u>8 February 2018</u></a>	<p>John McCormick (Screen Sector Leadership Group) Ken Hay (Screen Sector Leadership Group) Dr Belle Doyle (Association of Film and Television Practitioners Scotland) Kenny Glenaan (Director) Chris Young (Young Films Foundation, Managing Director and Producer) Professor Philip Schlesinger (Professor in Cultural Policy, University of Glasgow)</p> <p>Iain Smith (British Film Commission) David Smith (Producers Alliance for Cinema and Television) Clare Kerr (Mead Kerr) Wendy Griffin (Selkie Productions Ltd) Tommy Gormley (First Assistant Director) Fiona Miller (Association for Supporting Artists' Agents in Scotland)</p>
<a href="#"><u>14 December 2017</u></a>	<p>Glenn Preston (Ofcom) Kevin Bakhurst (Ofcom)</p>
<a href="#"><u>26 October 2017</u></a>	<p>Anne Bulford (BBC) Donalda MacKinnon (BBC Scotland) Ken MacQuarrie (BBC Scotland)</p>
<a href="#"><u>20 April 2017</u></a>	<p>Ian MacKenzie (Channel 4) Sophie Jones (Channel 4) Alan Clements (STV)</p>
<a href="#"><u>27 September 2016</u></a>	<p>David Smith (Matchlight) David Strachan (Tern TV) Donald Campbell (MG Alba) Natalie Usher (Creative Scotland) Rosina Robson (Producers Alliance for Cinema and Television)</p> <p>Anne Bulford (BBC) Alan Dickson (BBC Scotland) Ken MacQuarrie (BBC Scotland)</p>