

Pact's interim submission to the Ofcom
Review of Regional TV Production and
Programming guidance

pact.

May 2018

Introduction

1. Pact is the UK trade association which represents and promotes the commercial interests of independent feature film, television, digital, children's and animation media companies. Pact has around 500 members across the UK with around 150 based outside London across the UK nations and regions.
2. The UK independent television sector is one of the largest in the world. Independent television sector revenues have grown to around £2.5 billion in 2016, largely driven by a growth in international sales.¹
3. Pact's view of the Made out of London definition and guidance is that it offers balance and flexibility which has benefited companies based across the nations and regions and in London. The definition and guidance is broadly fit for purpose. Both hours and spend of first-run UK originated output on the five main PSB channels in the nations and regions has remained relatively flat over the last five years, if not decreased slightly² and broadcasters have broadly been reaching their Out of London quotas.
4. Pact supports the specific quotas agreed under the BBC service licence agreement for each of the nations and English regions. We also welcome the additional local spend announced for the BBC in Wales, Northern Ireland, BBC Scotland including the new channel in Scotland. This, along with the opening out of BBC local and network opportunities to competition and the Channel 4 announcement to increase investment out of London will provide more opportunities for production companies across the UK to build sustainable companies.

¹ Pact Financial Census and Survey 2017 (Oliver and Ohlbaum Associates for Pact)

² Ofcom Communications Market report 2016 and 2017

Response Summary

Pact welcomes the opportunity to contribute to this Review of the Regional TV Production and Programming guidance. Pact, and many of our members across the UK, attended and engaged in the Ofcom stakeholder roundtables during the summer/autumn of 2017. This interim response is based on input from members across the UK. We will be following up with Ofcom with further points of clarification in our response within the next few weeks.

Pact's view of the Regional TV production definition and guidance is that it offers balance and flexibility which has benefited companies both in the nations and regions and London. Both hours and spend of first-run UK originated output on the five main PSB channels in the nations and regions have remained relatively flat over the last five years, if not decreased slightly³ and broadcasters appear to have been reaching their Out of London quotas.

Pact's position is that:

- The definition itself in terms of the choice of two out of three criteria should remain the same
- The guidance could be updated and clarified in a number of ways including i) the way in which programmes are allocated to a nation or macro region when a substantive base is not claimed and ii) further clarifying the 'usual place of employment' aspect of the substantive base definition to where the senior personnel are resident due to tax purposes.
- The process of broadcaster reporting, Ofcom auditing and the compliance process could be tightened up including a published complaints process that would encourage compliance rather than opting for changing the definition.

Pact will further clarify and expand on these policy ideas in a follow up submission.

Background and context

This is a summary of Pact's involvement in the Regional TV production criteria and guidance to date.

2003	Introduction of the Communications Act setting out the broadcaster requirements to produce a suitable range and proportion of programmes outside London, tied to agreed quotas.
2004	Pact's Nations and Regions working group had extended discussions influencing the shape of the original criteria and guidance taking into consideration companies based across the UK
2008-9	Pact published reports on network production out of London carried out by a media consultancy called Attentional
2008	On the back of one of these audit reports, Pact reported ITV for being in breach of its out of London spend which led to a £220,000 fine by Ofcom
2009	Pact wrote to Ofcom in the context of consultation around the BBC Network Supply Review and Out of London regional guidance consultation confirming the value of the 'two out of three' criteria approach
2010	Publication of the first out of London register, the list of regional programmes that qualify under the definition after successful lobbying by Pact to improve transparency and compliance
2011	Updating of the Ofcom guidance for producers based on discussions with Pact including Ofcom agreement to an audit process

³ Ofcom Communications Market report 2016 and 2017

2013	Pact successfully lobbies Ofcom to include the production company on the face of the Out of London register improving transparency and compliance
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Analysis of the Out of London register

Pact has commissioned analysis of the Out of London register which has been published annually since 2010 and we attach this with the submission. There is a good deal of relevant information in the analysis but we would highlight overall that the register shows that the indie supply base is mixed with companies of different turnover bands achieving commissions.

By way of background on this supply base, three quarters of independent titles are produced by qualifying independents and about half of titles are produced by stand-alone labels (i.e. Indies not owned by a larger group). However, we caveat analysis of the register by the fact that it does not include information on programme hours or spend so is only one indicator of what is happening in the market.

Analysis of the number of titles produced by the 275 producers supplying regional TV programming to Public Service Broadcasters (PSBs) since 2013 show that:

- Over one third of Indies (102) have been commissioned for only one title during that period, and the majority of these companies are micro businesses (<£1m turnover). It could be argued that the current Made Out of London model is not providing sustainable production. However, it is difficult to reach a definitive conclusion as we do not have wider information about the context and other commissions e.g. local, international that these companies may have secured.
- The analysis suggests a mixed supply base with a sizeable proportion (143 companies) achieving between 2-15 commissions and a smaller number (30 companies) with 15+. Only 12 Indies are producing more than 30 titles (in some cases multiple episodes of the same programme).

Is London dominating production?

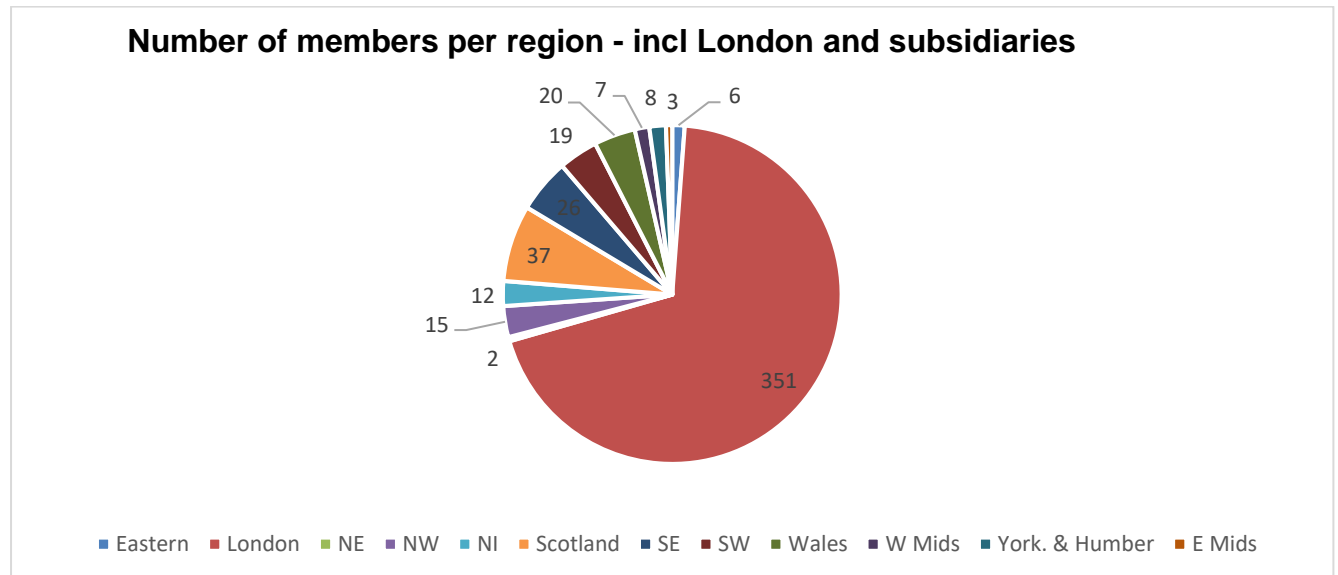
The question that this review should seek to answer is; are London based producers dominating regional productions? However, this is difficult to answer from the analysis of the Out of London register alone which only holds information on the location of productions, not the location of the production company itself. The analysis that Ofcom has commissioned from the consultancy O&O may seek to answer this question in part. We welcome further information from Ofcom about their interpretation of 'dominating' and what this would mean as a proportion of revenue overall, by genre or by subsector in the nations and regions.

Review questions

TV production sector landscape

The TV production sector in the nations and regions

Pact has 500 members across the UK including 150 companies based in the UK nations and regions. The chart below shows the breakdown by nation and region, giving a sense of the current make-up of the production sector out of London.



1. Which factors have, since the guidance was introduced in 2004, had the biggest impact (positive or negative) on the TV production sector in the nations and regions and why? Are these different to the factors affecting London-based productions?

1.1 The success of the Terms of Trade framework introduced through the Communications Act in 2003 has been the main factor in taking a small cottage industry to a global leader over a period of fifteen years. The ability for companies to control and exploit their own IP has benefitted companies across the UK including in the nations and regions.

1.2 As a result of this effective legislative framework, independent production companies based out of London are in a position to make the most of a range of opportunities announced over recent months including:

- Specific quotas agreed under the BBC service licence under the new BBC Charter for each of the nations and English regions.
- Additional local spend announced for the BBC in Wales, Northern Ireland and Scotland, including £30m for a new channel in Scotland.
- Opening out of BBC local and network opportunities to competition under the new Charter providing more opportunities for production companies based out of London.
- Channel 4 announcement to achieve 50% investment out of London by 2023 and to shift 300 staff out of London into two creative hubs and a new national HQ.

1.3 In light of these new opportunities, the increased investment expected and growth in international markets including unprecedented access to the US, arguably it makes it

even more important that the criteria and guidance is fully achieving its purpose of strengthening production out of London.

1.4 We note from Ofcom's figures on page 8 that all of the PSBs have been meeting on their regional production quotas over the last four years. We also note that from the analysis of the Out of London register that the number of indie suppliers used by the broadcasters has declined across all nations and regions over the last four years. We recognise that consolidation could have played a role in this although we accept that the number of producers that broadcasters engage with every year fluctuates.

2. What impact, if any, has the BBC's move to Salford had on the sector, and on regional production specifically?

2.1 Overall, the BBC's move to Salford has had a positive impact on production out of London as evidenced by the KPMG report to the BBC Trust in 2015⁴. Drama has flourished over the last five years in the North West region through a number of Indies with a national and international profile. The Manchester/Salford production centre is now moving into its next phase of generation through the emergence of a range of studio facilities including investment in the old Granada Studios.

2.2 However, one issue that we would highlight is that Pact's commissioned analysis of the Out of London register demonstrates that in-house production across the broadcasters accounts for a disproportionate share of titles in the North. See slide 23 in the Annex.

2.3 Analysis of the register shows that The North, has by far the largest in-house presences of all the regions, with BBC in-house production (primarily in Salford) accounting for 67% of titles in 2016 (down from 72% in 2013); while ITV (in Leeds and Manchester) accounted for 11% (up from 7%); independents only account for 24% of titles.

2.4 The register analysis shows that a high volume of programmes are allocated to the North, mainly because of sport programming. The North, stimulated by BBC and ITV in house production, has the most diverse range of genres in 2016 which shows how a mixed genre cluster/production centre can work.

2.5 As BBC contestable commissioning and Channel 4 investment increases out of London, Pact would expect to see an increase in the number of non-BBC producers winning commissions over time both in the North and across the UK and we will be monitoring this over time.

3. Do the opportunities for nations' and regions' producers vary by genre? If so in which genres is it easiest and hardest to get commissions?

3.1 Analysis of the Out of London register shows (see slides 24 and 15 in the Annex) that factual titles are dominant across most regions. It also shows breakdown of other genres by region. In addition to the North, Scotland also delivers a wide share of genres and we support BBC plans to develop a drama hub/centre of excellence in Scotland.

⁴ <https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2017/02/roleofbbcsupportingwebaccess.pdf>

4. What are stakeholders' views on the impact anticipated future structural changes in the industry might have on the production sector in the nations and regions?

4.1 We refer you to Pact comments at section 1.2. We believe that all of these factors combined including the Channel 4 announcement about additional investment and partial relocation could lead to a step change in investment in production outside the M25. The regional TV programming definition will operate within a different context going forward.

Substantive base criterion

- 5. In your experience does the definition of a substantive base work well in practice? If not, how could it be improved?**
- 6. Does the criterion currently contribute to the objective to strengthen *regional production*? If so how, if not why not?**
- 7. Are there any circumstances in which an office designated as the usual place of employment of senior or executive personnel should not be considered a substantive base? If yes, please provide further explanation.**
- 8. Does this criterion currently create any unintended consequences?**

Substantive base

'the production company must have a substantive business and production based in the UK outside the M25. A base will be taken to be substantive if it is the usual place of employment of executives managing the regional business, of senior personnel involved in the production in question, and of senior personnel involved in seeking programme commissions'.

5.1 Pact broadly supports the current substantive base definition which contains an element of flexibility and works for companies based across the UK. Pact calls on Ofcom to underline and clarify in the guidance accompanying the definition that broadcasters and producers are required to meet all three elements of the substantive base definition.

5.2 Pact proposes an amendment to the definition, as outlined in bold below, to state residency for tax purposes could be an indicator of where an individual employee is actually based.

*'A base will be taken to be substantive if it is the usual place of employment [**identified through place of residence for tax purposes**] of executives managing the regional business, of senior personnel involved in the production in question, and of senior personnel involved in seeking programme commissions.*

5.3 We acknowledge that the definition was carefully crafted by Pact and a working group initially to ensure that it promotes production out of London but that it also offers companies across the nations and regions an element of flexibility and ability to grow their business.

5.4 Pact also proposes that in the case of productions that are not claiming a substantive base - that as they meet the 70% production budget and 50% production talent requirements – 70% of the programme budget should be set against the relevant nation or macro region pro rata or in proportion to the actual spend in that nation or macro region (as opposed to 100% which is the case at the moment). We will expand further on these policy ideas in a

follow up submission shortly. We are aware that further restrictions could favour BBC Studios which already has a substantive base in each of the nations and English regions.

5.5 We welcome suggestions made by the BBC that they do not count the following as part of the definition and would welcome a commitment from the other Public Service Broadcasters (PSBs) that they take a similar approach:

- Substantive base that has subsequently closed (counted at the end of the relevant reporting period)
- SPV (Special Purpose Vehicle) bases

5.6 Companies out of London have flagged a number of examples and issues with the way that the substantive base definition has been interpreted by broadcasters and production companies in recent years. There have been some examples where it is perceived that some productions have not met the 'spirit' of the definition even if they have met the letter of the definition. This is particularly the case where an out of London production *is allocated* to a specific nation under the current guidance.

5.7 Some anonymised examples of this would be:

- Company A: in the latest version of the Out of London register⁵ this production claims a substantive base and 50% production talent spend in Scotland. The substantive base was either the company office in the nation which closed earlier this year or the temporary production base on location. Although we believe the intention of the broadcaster was for the office to remain open into the future.
- Company B producing a sports series: this was produced over more than one region/nation but under the current definition, allocated to Scotland as the substantive base despite key production executives being based outside of Scotland.
- Company C: this production has been listed in the Out of London register for the last three years. The production claims a substantive base and 50% of the talent spend however the company had no listed office in the nation apart from a 'pop up' office that only opens for a short time on an annual basis, according to staff in the company's London office (where the Scotland number redirects).

5.8 Pact believes that with the amendment to the definition, more transparent reporting and auditing in the future (as outlined in response to questions 41 and 42) that examples such as this that arguably do not meet the 'spirit' or the letter (in the case of example C) of the definition will be highlighted and prevented.

9. We would welcome any information/examples from production companies on the range and roles of staff in production offices outside of London.

9.1 We refer Ofcom to the information in the Pact Census 2017 which shows that one third of employment in the independent production sector was situated out of London although this does not indicate the type of roles.

⁵ <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/made-out-of-london-tv-programming>

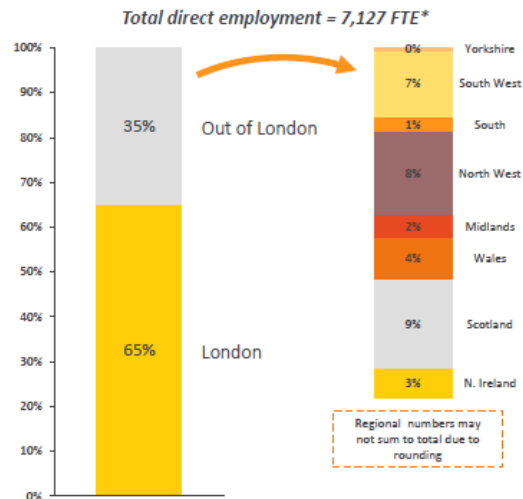
5. Out of London

One-third of employment was situated outside London

Employment follows a similar regional split to the value of primary commissions, with Scotland and North West England taking the highest regional shares

Employment by region, 2016

% of direct, full-time equivalent employment within producers included in the census



- Roughly one-third of direct production-related employment is created by producers based in the nations and regions; this is very similar to the split for primary commissions and production budgets
- Scotland, the North West and the South West are the largest regional production hubs. Northern Ireland and Wales also have sizeable production employment.

Note: North East England and Anglia, both at 0%, are not visible on the graph above

Full-time equivalent (FTE) represents the equivalent number of full-time employees. The total shows the average employment over the year.

Direct employment does not include freelance workers

Source: Pact UK Television Production Census 2017, Oliver & Ohlbaum analysis

pact. 28

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9.2 We also refer you, from the point of view of Scotland to the most recent EKOS consultancy report 2016⁶ including information about employment in the production sector in Scotland. This may be supplemented by responses to a Skills Sector Scotland survey report shortly.

10. Do producers tend to share space in the nations and regions in order to expand and contract in line with their commissioning slate and thus to help with costs/efficiencies?

10.1 Pact members tend to have their own regional offices and this can involve, as a startup measure, renting desk space in a larger office or serviced office space. There are also recent example of companies being bought up by other companies in the same nation/region e.g. Wildflame productions/distribution acquisition of Green Bay Media.

Production budget criterion

11. Is the production budget criterion set at the right level?

12. What challenges do producers face in meeting this criterion? Do these differ dependent on the substantive base of the production?

13. Does this criterion currently create any unintended consequences?

⁶ Broadcast and TV Production Strategy Research, (September 2016)

<http://www.evaluationsonline.org.uk/evaluations/Browse.do?ui=browse&action=show&id=598&taxonomy=BU>

14. We welcome any evidence/data of how production budgets for nations' and regions' productions work in practice.

11.1 Pact supports the production budget criterion and believes that it is set at the right level at 70%. Producers find this both fair and challenging to meet, meaning that any production using this aspect of the criteria in the correct way is truly regional. Pact would resist any calls to change the criterion because it offers flexibility to all types of companies wherever they are based across the UK.

11.2 Some producers comment that in order to meet the 70% spend criteria, a company has to do their post-production out of London which ensures skills development and investment in the region.

11.3 As we outline in the final section of the response, more effective auditing would ensure that production budgets are meeting both the letter and the spirit of the guidance, including preventing instances, for example, of crew and equipment being contracted via a third-party facilities company with a nations and regions base (enabling the spend to appear to be out of London) when, in fact, a set of London-based individuals have sub-contractor deals with that third-party company.

11.3 Pact periodically receives queries from producers that are filming internationally in some cases to secure international partners and funding to deliver programming. It would be helpful for Ofcom to include an explanatory note in the guidance as to why international filming costs are not included in the production budget. Our understanding is that the original definition was conceived with international filming and production in mind.

Off screen talent criterion

15. Is the off-screen talent criteria set at the right level?

16. How easy or difficult is it for programme makers to fulfil the current criterion?

17. Is there a representative spread of nations' and regions' talent at all levels available to hire? Are there certain roles where it is not possible to fill from within the nations and regions alone? If yes, which roles and what impact does this have on production budgets?

18. Do broadcasters give producers the flexibility to employ the staff they want regardless of location?

19. Which roles, if any, are most often prescribed by the broadcaster? Does this vary by genre?

20. Does this criterion currently create any perverse incentives?

21. We welcome any evidence to suggest whether the distribution of off-screen talent and the range of skills available has changed since this level was set in 2004.

15.1 Yes, Pact believes that the current off-screen talent criteria is set at the right level. It provides flexibility for companies and allows for the import of specialist skills into some projects.

15.2 We are aware that there is a call from some quarters to increase the 50% production talent spend to 80% in order to secure more investment in local talent in the nations and regions and help them sustain careers out of London. It is argued that such a move could be phased in over a period of time.

15.3 However, it is important to realise the impact that this change could have across the UK. One issue that has been flagged to us by companies in Northern Ireland for example is that animation/children's companies report this would be difficult to achieve in the children's space as there are not enough animators to source locally to deliver a production. This would be the case for other genres too. The current definition offers flexibility in these circumstances and Pact would strongly recommend against changing this criteria.

15.4 The current definition also offers flexibility and the possibility for productions to use key talent based across the UK, such as Executive Producers living in different parts of the country. Some companies argue that there is not the critical mass in any one nation or region alone to cover all of the job roles and specialist expertise across the genres from senior to lower level talent.

15.5 Some companies report a shortage of candidates in the nations and regions at Executive Producer (particularly in the nations), Series Producer, Director, Production Manager, Coordinator, Editor and even junior entry level roles. Other companies report the challenge of finding top tier crew talent at busy times particularly in Scotland and Wales.

15.6 In some cases producers report that the broadcaster prescribes the use of a particular Director that may be based in London, or across the UK, for creative purposes. These companies would prefer that such a decision is more of a two way discussion particularly with regard to the choice of talent at senior levels. The criteria should not restrict the use of the 'right' creative or editorial lead from working on a production; this is particularly true for returning series.

Criteria as a whole

- 22. Are the three criteria used to define a *regional production* for the purposes of the quotas the correct ones or are there other factors that should now be included instead/ as well?**
- 23. How well do the criteria collectively contribute towards the sustainability of the production sector outside of the M25?**
- 24. Are there any unintended consequences of the criteria or guidance more widely that undermine the sustainability of the sector beyond the M25?**
- 25. Are the criteria too narrow? For example, are there cases of nations' and regions' productions that fail ultimately to qualify towards the *regional production* quota?**
- 26. Is the criteria-based approach the best for regulation in this area, or are other models that might work better?**

22.1 Pact's view of the current Made out of London definition and guidance is that it offers balance and flexibility which has benefited companies both based in London and the nations and regions, both established companies and new entrants to the market. Our understanding is that when the definition was conceived a good deal of debate and thought went into ensuring that the definition offered flexibility to companies across the UK. There are examples of companies in Scotland producing content in Wales and Northern Ireland and companies in Manchester producing in Northern Ireland. Pact want this pro-competition approach to continue.

Analysis of the Out of London register⁷

⁷ Pact caveats these results by pointing out that there are differences between how programmes, series, and inserts within programmes are categorised and reported through the register

22.2 Analysis of the number of titles produced by the 275 producers supplying regional TV programming to Public Service Broadcasters (PSBs) since 2013 show that:

- Over one third of Indies (102) have been commissioned for only one title during that period, and the majority of these companies are micro businesses (<£1m turnover). This could suggest that the current Made Out of London model has not yet translated into one that encourages sustainable production companies. However, we do not have wider information here about the other commissions e.g. local, international that these companies have secured.
- The analysis suggests a mixed supply base with a sizeable proportion (143 companies) achieving between 2-15 commissions and a smaller number (30 companies) with 15+. Only 12 Indies are producing more than 30 titles (in some cases multiple episodes of the same programme).

How the criteria are working

22.3 As further evidence of how the three criteria are currently working. Pact would draw Ofcom's attention to the following analysis attached to this response:

- Medium and large Indies have taken a greater share of Made out of London titles overall over last four years (see slide 17 in the Annex).
- The number of independent producers used to deliver Made out of London has declined by 8% from a high of 174 in 2013 to 137 in 2016. We recognise that consolidation could have played a role here, that broadcaster spend has remained stable and that it is part of the development production cycle.
- In terms of analysis by broadcaster, the BBC has the most diverse supply base commissioning from 80 producers in 2016, down 11% from 111 in 2013. (see slide 19)
- Channel 4 also has a diverse base using 65 producers in 2016 down 4% from 77% in 2013.
- ITV and Channel 5 have much smaller supply bases; with ITV commissioning only 14 Made Out of London producers in 2013 (this has held broadly flat over the last four years) and Channel 5 using 15 (down from a high of 24 in 2013).

22.4 Our view is that there is a mixed market supply with the commissions broadly spread across genres with small (£1m-£5m) and micro (<£1m) accounting for 48% of indies used by the BBC between 2013-16, versus 41% for ITV and Channel 5 and 41% for Channel 4. Spend dominated by the North, South and Scotland.

22.5 In terms of other criteria, Pact would not support a points-based system as outlined on page 17. This would make the system onerous and more bureaucratic for broadcasters and producers. The current system is more flexible for companies across the UK.

Role of London in the regional production process

- 27. In your experience, how big a role does London play in nations' and regions' productions and in what way?**
- 28. What benefits/disbenefits do you consider 'Lift and Shift' production brings to the nations and regions? We would welcome case studies/examples of 'Lift and Shift' productions.**
- 29. Does 'Lift and Shift' help or hinder the sustainability of production in the locality of a production and in the nations and regions more widely?**

27.1 By way of an indicator, the Pact Census 2017 showed that one third of UK commissioning revenue is based out of London. Our interpretation is that this is an indication because the sample size for out of London is limited and does not include a large number of smaller companies that may offer a different perspective on the results.

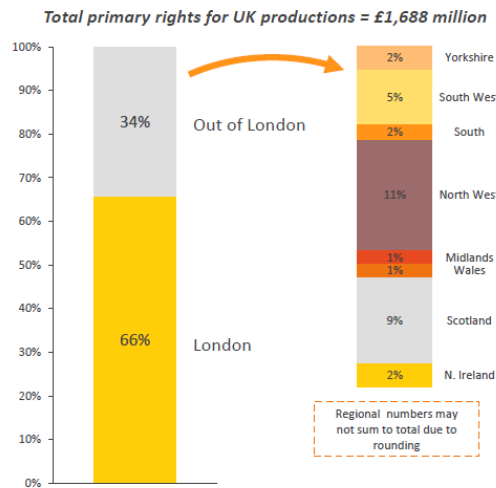
5. Out of London



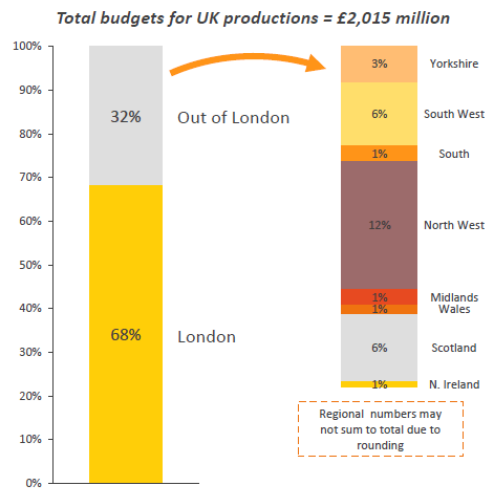
Over one-third of spend and employment was situated outside of London

Over one-third of primary commissioning revenue is located outside London; Scotland and the North West are the two largest regional hubs. 68 per cent of production budgets are spent inside London

Primary commission value by region of production, 2016
% of primary commissions spend amongst producers included in the census



Production budget by region of production, 2016
% of production budget (UK) spend amongst producers included in the census



Note: North East England and Anglia, both at 0%, are not visible on the graphs above. Overseas productions have been excluded from these graphs
Fewer respondents provided production budget information so our sample is not consistent between these two graphs

Source: Pact UK Television Production Census 2017, Oliver & Ohlbaum analysis



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27.2 Ofcom outlines well the issues and different opinions around how 'Lift and Shift' has impacted on production across the UK. Pact believes that on the whole 'Lift and Shift' has initially brought benefits to the wider production sector as a whole in terms of volume and new genres leading to more opportunities to build and retain the skills base crucial to the industry. This we believe is in line with the purposes of the current definition and how it was conceived.

27.3 We are aware of a range of different views within the Pact membership about the impact of Lift and Shift. Some producers feel that the subsidiaries of larger production groups have disproportionately benefitted from the definition in the nations and regions. Scotland, for example, accounts for 53% of all hours commissioned by the BBC from NQIs⁸. There is a recognition from other producers that many larger group subsidiaries have committed in a positive way to specific nations and regions. However, there remain concerns about 'pop up companies' that are seen to go to the nations and regions just to produce a particular programme or series and do not stay (i.e. Lift and Shift and Leave).

Moving an established long running series to a region

27.4 One concern that companies have in the nations and regions is that there have been a number instances in which a broadcaster wants an established long running series that is made in London and requires the production company to move the whole production to a region, for example:

⁸ A new model: Building a sustainable Indie sector in Scotland report (2015)

- BBC moving Homes Under the Hammer, The Big Questions and Question Time to Scotland
- Ch 4 moving 15 to One to Scotland
- Ch 4 moving Time Team to Wales
- Ch 4 moving One Born Every Minute to Wales
- BBC moving Points of View to Northern Ireland
- BBC moving Wanted Down Under to Northern Ireland (filmed in Australia/NZ)
- BBC moving This Farming Life to Northern Ireland.

27.5 The shows do usually genuinely move to the region to the degree required under the Ofcom criteria and contribute to regional production investment and talent development but only for the lifetime of that show. The programme contributes to the regional spend quota and investment feeds back to non-regional Indies. The tendency is for the production staff to move away when the series ends and some senior roles are only relocated temporarily or, reportedly, on paper. We also recognise the freelance nature of the production sector is a reality with talent working on different projects across the UK.

27.6 This risk for both BBC and Channel 4 as they seek to meet their new quotas is that Lift and Shift occurs to achieve this. In this regard, Pact would like to see broadcasters investing more in *local* talent at all levels but particularly at more senior levels.

30. Are there different parts of the production process which are more likely to happen in/out of London?

Post Production

30.1 The guidance could encourage broadcasters to carry out post production in the area of the substantive base or out of London. Some producers based out of London have suggested that broadcasters should be encouraged to carry out, for example, the production edit out of London as part of the production spend criteria. Anecdotal evidence tells us, particularly in the English regions that often a programme is filmed in the nations and regions but not then edited out of London when there is available talent and editing facilities.

30.2 This is an area where there are, in some cases, lost opportunities for local talent for learning and skills development around post production. Some companies based out of London also report the travel and accommodation costs attached to supporting an editor staying in London for 16 weeks during the course of the edit.

30.3 Pact would not advocate stipulating that post production or an edit should take place outside London. There are cases at busy times in production when talent in certain genres, e.g. editors in comedy is difficult to find. We are conscious of the fact that the commissioning editor may be based in London and require oversight of the edit. By forcing such a move could incur onerous costs, travel and time commitments on the broadcasters. We also appreciate with the use of vimeo and other technologies that the editing process can often be carried out remotely.

Further information on representation and portrayal

31. We would be interested in receiving evidence or case studies from stakeholders which could develop our understanding of the contribution that *regional productions* currently make to representation and portrayal of the nations and regions in order to gain a sense of the scale of this consequential benefit.

31.1 Pact is clear on the fact that the regional programming guidance should focus on programming rather than portrayal. Pact refers Ofcom to the key points in our recent response to the Ofcom review of BBC representation and portrayal.

31.2 Pact's view overall is that the commissioning of returning series and consistent commissioning is the key to building sustainable businesses in the UK nations and regions over time. This will help Indies build scale and sustainable businesses creating content for local, UK wide and international audiences.

Process for allocating productions

32. Does the process by which productions are allocated to a nation or macro-region work well in practice, or are there any other approaches you think we should consider instead? E.g. allocating proportions of one title to the different areas in which it was made.

33. Where a production has met the three criteria in different nations/ macro-regions the allocation defaults to the substantive base. Is this the right approach or does it deliver unintended consequences?

34. Is there anything else we need to take into consideration here? E.g. are the current nations and macro-regions the right areas to use for allocations?

32.1 The macro regions approach offers an element of flexibility to companies based across the UK to comply with the definition and involve production in a number of regions.

32.2 However, the issues here have already been raised by example B above; the issue is that because this example is a returning series that it takes up significant proportion of the Scotland quota.

32.3 As stated, each programme that qualifies under the regional programming definition is allocated to a nation or macro region. If a production meets the 70% production budget or 50% production talent spend then 100% of the broadcaster budget for that production is set against the nation or macro region of the substantive base.

32.4 Pact proposes that in the case of productions that are not claiming a substantive base - that as they meet the 70% production budget and 50% production talent requirements – 70% of the programme budget should be set against the relevant nation or macro region pro rata or in proportion to the actual spend in that nation or macro region (as opposed to 100% which is the case at the moment).

32.5 Pact will be giving further comment on this proposal in a following submission shortly. Pact calls on Ofcom to do a review of this measure within two years to ensure that it has no unintended consequences. We believe that with more transparent reporting and proactive auditing in the future that examples that do not meet the 'spirit' of the definition can be avoided in the future.

Regional programming

- 35. Are the on-screen criteria used to judge regionality appropriate, or are there other factors that should now be included instead/as well?**
- 36. Are the three criteria used to determine whether a *regional programme* was made in the area for which the service is provided appropriate, or are there other factors that should now be included instead/as well?**
- 37. Are there any other aspects of the *regional programming* section of the guidance which require more detailed review?**

35.1 Pact has no proposed changes to make to the existing regional programming definition. However, given the positive commitments made by the BBC, Channel 4 and Channel 5 in terms of its Out of London commissioning strategy at the recent Creative Cities Convention in Leeds⁹, Pact welcomes the role of the Government and Ofcom in encouraging ITV and Channel 5 to further enhance their investment out of London.

Reporting and compliance

- 38. What is useful about the current '*Made outside London programme titles register*' and why?**
- 39. Are there ways in which the Register could be improved? If yes, how?**
- 40. Is there additional information which could be included in the Register to aid transparency?**
- 41. Are there any other ways in which we could improve the transparency of our reporting?**

38.1 Pact pushed for the original publication of the Made Out of London programme register in 2010 in order to encourage transparency around reporting. In 2013, we also called for programme titles to be added to the publication of the register to further improve transparency. We obviously support the publication of the register on an annual basis in September.

38.2 Pact makes the following recommendations to improve transparency of reporting:

- i) *More consistent reporting by Ofcom*

Following the analysis that Pact carried out on the Out of London registers over the last seven years (see the Annex) it is clear that one major flaw in the reporting is that there is no distinction between a series, programme, or insert within a programme. Reporting that clarifies this in the future would support future analysis of the register so that we are in a better position to determine whether the definition has achieved its aim of strengthening production out of London.

- ii) *Include information on hours and spend*

It would greatly add to the value of the register in the future and support future analysis of trends in out of London production by including information on both hours and spend. Broadcasters should be asked to supply information on hours for each production and spend which we think is relatively straightforward to collect. In order to protect budgets and commercially sensitive information from producers, broadcasters could supply tariff bands

⁹ <https://www.creativecitiesconvention.com/>

for each production. Ofcom could then supplement this information with data and analysis from the annual Ofcom PSB compliance report to give a wider context to the list of productions.

iii) More consistent and standardised reporting by the broadcasters

Pact would welcome more consistent and standardised reporting from the broadcasters which would facilitate the auditing process by Ofcom. Broadcasters would still be free to use their own online forms and templates but could ask the producer for further detail as to HOW the criteria were achieved including:

- Postal address of the substantive base criterion
- Names of senior personnel located at that base and their place of residence for tax purposes
- Percentage of the production budget spent in the UK outside the M25
- Percentage of the production talent based in the UK outside the M25
- Which nation or region each criteria was met in (and if multi-region, the macro region in which the majority of the budget and talent each criteria were met). We are aware in cases where programmes are genuinely multi-regional, that we would want to avoid the work involved in splitting proportion of spend across several regions into individual pockets of regional activity. This would add a reporting burden to both large and small companies and more likely to impact on resourcing in smaller companies.

The purpose of the proposals above would be to encourage compliance and the information feed to the regulator but not necessarily for all of this information to be published on the face of the register. We recognise that this data gathering would operate within the new GDPR (General Data Protection Regulation) framework.

Broadcasters could also ask for feedback from producers, for example, around areas of talent/facility that proved most challenging to help inform future training and investment decisions.

iv) Enhancing analysis of the register

One way of enhancing the information published in the register, would be for Ofcom to develop further the covering analysis so that trends for that year and over time are made clearer. This will become even more meaningful with the inclusion of information on hours and spend. Ofcom could include further analysis over time by nation/region or genre. This type of analysis has been included in part over the last two years but could be developed further in the future.

Other areas for consideration

39 Are there other issues stemming from the guidance that are not addressed in this Call for Evidence? If yes, please set out what they are.

42.1 The main focus of our recommendations in this section are focused on Ofcom and the ways in which they can improve compliance with the existing definition.

Improving compliance with the definition

i) *More coordinated auditing process*

Pact would welcome Ofcom taking the lead in establishing with the broadcasters a more coordinated approach to the process of auditing under the Out of London definition. We would welcome further transparency from Ofcom when they report on the review as to what their current auditing process actually consists of. Anecdotal feedback from companies tells us that Ofcom auditing is usually provoked by a query from an external producer.

We are aware that some broadcasters e.g. Channel 4 carry out spot checks on a random sample of productions each year, led by an external auditor. The current system should be based on trust between the broadcaster and the producer and any new system to strengthen this approach and not erode it in any way.

Pact would welcome Ofcom being more proactive in coordinating compliance processes around the definition. We should be careful to balance auditing to ensure that the letter of the criteria are being met whilst not placing unnecessary and disproportionate burdens on producers reporting to the broadcasters, which are likely to impact on smaller companies in particular. We prefer methods that encourage compliance rather than going down the route of broadcaster fines.

ii) *Published and formalised complaints procedure*

There is clear value in Ofcom setting up and publicising a more formal complaints process which we believe would encourage compliance. There have been cases where producers have raised concerns about whether a particular production has complied with the definition, that have taken several months for Ofcom to reach a decision and report back. Ofcom should set out a simple process as to how any complaint will be handled, including a published outline of the process and timescales that stakeholders can expect for a response. There should be a clear sequence of actions set out, such as a swift acknowledgement of the query, two months for a broadcaster to respond and if appropriate remedy an issue. The whole process should lead to a finding by Ofcom within no more than six months from receipt of a complaint.

iii) *Pan industry guidance on the criteria and reporting*

We believe that pan industry guidance as to how the criteria work, the way that broadcasters report and the process of auditing should be outlined in a set of guidance and agreed by all stakeholders i.e. Ofcom, broadcasters and Pact.

iv) *Broadcaster fines*

Pact notes that it is already a requirement of all of the PSB licenses that they must have regard to the regional TV programming guidance. Pact exposed ITV in the past for not meeting its Out of London quota, but not for specific programmes, and was fined £220,000 in 2008 as they had met the hours but not spend quotas for that year. This ability for Ofcom to levy fines should continue related to the overall quota, but not linked to specific programmes which could have a knock on impact on commissioning budgets.