

OFCOM REVIEW OF REGIONAL TV PRODUCTION AND PROGRAMMING GUIDANCE – CALL FOR EVIDENCE

RESPONSE FROM SCOTTISH GOVERNMENT – MAY 2018

Key points

- **The Scottish Government wants a Public Service Broadcasting system that supports thriving and sustainable creative sectors in each nation and brings lasting benefits to Scotland’s economy and culture**
- **We agree with Ofcom that the purpose of the Made Outside London regulations should be to realise “the full economic and cultural benefits of TV commissioning across the UK” and welcome the focus of its current review on how this can be delivered more effectively**
- **Ofcom’s regional production guidance has brought some progress, which is welcome**
- **However, the current guidance has not delivered the desired results for Scotland and its creative economy and has failed to achieve its aim of breaking the dominance of London-based producers over regional production**
- **We welcome new broadcaster initiatives to address commissioning deficits in the nations but believe regional quotas remain necessary**
- **Evidence from the Ofcom register is that network production in Scotland appears to strengthen the creative economy in London as much as, or more than, the sector in Scotland**
- **The guidance should be strengthened to stimulate further indigenous growth**
- **The criteria should be more challenging, the data submitted more detailed, and it should be monitored more closely to ensure that all the programmes assigned to Scotland return long-term value to the Scottish economy**
- **Broadcasters should treat the authentic representation of Scotland and its diverse communities as an essential and intrinsic part of commissioning from nations so they can serve all their audiences and support rounded economic development across all the UK**
- **The aim must be to create sustainable sectors in each nation capable of producing across the full range of genres, which is why we are calling for quotas at genre level**
- **Ofcom should adopt those proposals that prioritise the development of companies genuinely rooted in each nation, which own and develop their own creative ideas, as this is the best way to benefit a creative economy and its audiences**
- **Inward investment can contribute to creating short-term jobs and experience but companies not permanently based in Scotland should meet a higher bar for investment and hiring of local creative talent, and only production carried out in a nation should be set against its quota**
- **Ofcom has a crucial role to play both in setting requirements that will achieve desired outcomes and in ensuring broadcasters and production companies adhere to these and we would expect the regulator to take a more active role in auditing, including by initiating checks itself**

1 – The TV production sector landscape (questions 1-4)

Regional programme guidelines

We note welcome progress since the guidance was introduced in 2004, led by the BBC and C4 whose spend on network production in Scotland is now more commensurate with population share. However, other PSBs perform less well and overall progress has been slow. Ofcom states that its Review of the TV Production Sector (2015) found that “*the main hub for production companies was still London*” (2.3).

The SG supports Ofcom’s use of quotas as “*industrial policy interventions that aim to support and strengthen the TV sector and creative economies of the UK nations and regions*” (3.1) However Ofcom’s 2016 Made Outside London programme titles register suggests that around half of the companies producing network content in Scotland are London-based or branches of these, and that they appear to comprise a majority of the high-volume producers operating in Scotland. Network production in Scotland therefore appears to “strengthen the creative economy” in London as much as, or more than, the sector in Scotland.

These externally-based companies have brought benefits to the sector in Scotland by creating employment and helping to develop skills. But the key benefit of high-volume production is the margin created to support the development of ideas with which to secure future commissions, and so grow a business. High-volume formats can also add value through acquisition of IP and secondary rights.

The imbalance in the Scottish sector means that these benefits may accrue more to the businesses headquartered in London than to those based in Scotland. We therefore believe that this dominance, while bringing short-term benefit, is in the longer run an obstacle to the development of a mature production sector in Scotland.

This suggests that, as they stand, the guidelines are insufficient to deliver Ofcom’s aim of realising the full economic and cultural benefits of TV commissioning across the UK. To shift the balance in favour of London-based businesses to indigenous companies, we believe the criteria should be more tightly drawn, more transparent, and be subject to audit to make certain that productions registered as “Scottish” are genuinely made here.

Concerns have been voiced about the accuracy of some of the data in the Ofcom register. As a regulator, Ofcom must be able to have complete confidence in the data it publishes and uses to monitor compliance. Responsibility for auditing the data should lie with Ofcom and not, as at present, with broadcasters themselves.

To increase the rate of progress, the guidelines should be more specific and robust, compliance should be actively monitored, and there should be greater transparency in publication of the relevant data.

Ofcom should take a more active role in initiating checks on programmes and not rely on complaints being lodged by individuals or companies in the sector since they may be deterred from raising these because of a need to maintain positive relationships with potential commissioners.

Opportunities by genre

Producers in nations should have equal opportunities to bid for and win commissions across all genres. In practice this has not been achieved, partly because broadcasters have sought to create specialisms in certain locations in the interests of efficiency and quality control.

In an ideal situation the balance of genres produced for networks in a nation should approximate to the overall UK balance. By this measure there has been a serious deficit in network drama production in Scotland. BBC/C4 have not developed successful long-term strategies for drama production in Scotland, at least until now. This has inhibited growth in what is the highest-spending genre, and impoverished cultural representation of Scotland on the UK networks.

Some form of genre quota should be introduced for the major PSBs to ensure that their spending creates equality of opportunity for producers across the UK, and Ofcom should consider extending nations quotas to ITV and C5.

Anticipated future changes

Recent initiatives from the BBC, C4 and the Scottish Government will increase investment in the sector in Scotland. To maximise the benefits of this investment, we believe Ofcom's regional production guidelines should ensure that commissioning behaviour supports development of the TV sector in each nation as far as is compatible with editorial priorities.

The new Creative Scotland Screen Unit will work with PSBs and Ofcom to create an integrated approach to the sector in Scotland, prioritising the development of indigenous companies and growth across all genres, and in alignment with Ofcom's regulatory regime.

The guidelines should also take account of the possible effects of BBC and C4 future plans. BBC commissioning objectives and processes in Scotland are still evolving following the creation of BBC Studios: their relationship to the guidelines should be considered so that they may support the BBC's obligation to contribute to the development of the creative sectors in the nations.

C4's plans to increase spending outside of London may be expected to benefit the nations and regions as a whole. However, to ensure that benefits are spread proportionately, there should be quotas for specific nations and regions and C4 should be asked to support the development of key genres like drama in each of the nations.

Content on the proposed BBC Scotland channel, if approved, would be created specifically for audiences in Scotland so we believe it should have no bearing on the network production element of the current review.

Summary

- The 2016 Made Outside London register suggests the Scottish market is still dominated by London-based companies holding most of the high-volume, returning series which are the basis for further growth. The network production

criteria should be more robust to ensure that all the programmes assigned to Scotland return value to the Scottish economy.

- Responsibility for auditing the data should lie with Ofcom and not with broadcasters themselves.
- Consideration should be given to setting genre quotas where there has been a failure to commission key genres like drama proportionately across the UK.
- Ofcom should consider extending nations quotas to ITV and C5.
- Production for the new BBC Scotland channel should not count as network production

2 – The criteria (questions 5-26)

The criteria are designed to test whether a sufficient proportion of TV programme-making activity has taken place in a specific nation/ region to justify allocation of the programme to that nation/region, in an industry where production activity is often diffuse. Although the present criteria do capture production activity, however imperfectly, they do nothing to track the destination of the IP - the ownership of the ideas - and profit which are key factors for strengthening the sector in the longer term. Therefore (in response to the issue raised at 4.18) we consider that the current requirements are not capable of generating the longer-term benefits.

The present criteria do not sufficiently contribute to the objective to strengthen regional production (questions 6, 22 and 23). They have helped to bring about the progress achieved so far. But with the sector in Scotland still, after 13 years, dominated by London-based companies or branches, we believe it is time to strengthen the criteria to stimulate a renewed phase of decentralisation.

The Scottish Government does not have direct experience of how the three criteria have worked in practice. However evidence was given to the Scottish Parliament's Culture committee screen inquiry suggesting that the criteria fail on occasions to deliver in the spirit of the guidance. We urge Ofcom to look closely at the evidence provided to them by Scottish-based companies, and with the awareness that power relationships in this highly competitive industry make it sensitive for members of the sector to comment on the conduct of other industry players.

'Substantive base' criterion

We agree with stakeholders who argue that the substantive base criterion should be strengthened to prevent transient activity and encourage businesses to put down permanent roots in Scotland. Senior production personnel could be defined as company directors and these could be asked to voluntarily declare tax codes or postcodes as evidence of residency, and therefore rootedness, in Scotland.

We also urge that the 'substantive base' criterion be treated as the most important criterion for all regional productions. If a programme is made in Scotland but IP and profits revert elsewhere, the activity will not contribute to the long-term development of the sector. While such production activity is welcome, it will not strengthen the sector as much as production by companies based here.

In order to allow flexibility and acknowledge the role that inward investment can play in bringing jobs and experience as a sector develops, we suggest Ofcom could adopt a two-tier approach.

For those companies that can show they have permanent roots in a nation, the requirements for the other two criteria could remain the same as they are now.

However, if a production cannot demonstrate substantive base, Ofcom could set a higher bar for it to be registered as Scottish than the current 50% talent (excluding on-screen) and 70% production spend in nation. In any event, only that production spend actually carried out in the nation should be offset against the nation's quota and not, as is currently possible, all spend regardless of where outside London this takes place.

'Off-screen production talent' criterion

PSBs should be actively seeking to create opportunities for programme-makers in the nations/regions. Arguably the most successful growth model to date – that of Channel 4 – is based on developing indigenous talent. Reliance on an existing talent pool in London means commissioners are not exploring or creating new options across the UK and where broadcasters are not making sufficient progress, it is appropriate for Ofcom to make regulatory interventions to encourage them to do so.

Ofcom could set a more challenging criterion for production talent to encourage commissioners to be less reliant on London-based talent, and to stimulate the growth of indigenous companies able to capture and exploit in the nations the intellectual capital – the development of the best ideas – which is the lifeblood of the industry.

3 – The regional production process (questions 27-30)

We concur with the views quoted at 4.24 that 'lift and shift' is now hindering the development of indigenous companies in nations/regions, and the growth of mature sectors able to deliver across the full range of genres; and we would urge that regulatory interventions be made to prioritise these two objectives.

4 – Contribution to representation and portrayal (question 31)

In Ofcom's 2017 PSB Annual Research Report, 83% considered it important for PSBs to "portray their nation/region fairly to the rest of the UK" but only 63% considered that PSBs delivered this (Annex A, fig. 9). Although delivery has improved in recent years, this shortfall in portrayal remains one of the largest.

The Call for Evidence notes that representation and portrayal are not '*core to the intention*' of the regional production requirements, but also that the latter have the potential to deliver consequential benefits for representation (3.2 and 4.28). It also says (4.28) that Ofcom "*consider[s] this to be a positive and valuable consequential benefit attached to a range of regional productions*" however no evidence is given for this. With only a small proportion of the 180 Scottish titles in the register appearing to offer representation or portrayal of Scotland, it is difficult, on the face of it, to conclude that the guidance has made significant impact as far as Scotland is concerned. We recognise that it can be hard to assess from programme titles alone

and look forward to seeing evidence from stakeholders on this topic in response to question 31.

We agree that “*representation and/or portrayal may well be delivered by regional productions, either as a deliberate editorial choice on the part of the programme makers or simply as a consequence of the production process which is, in turn, strongly shaped by the guidance*” (4.28) however as noted above, we do not at present see evidence that there has been a very significant effect of this kind.

We suggest that the elements of any programme which contribute to representation and portrayal may largely be outcomes of channel strategies and commissioning decisions, both of which operate at a UK level with final decisions remaining at network centres. The root of this problem – the over-centralisation of UK commissioning – therefore lies outwith Ofcom’s remit. However it may be open to Ofcom to follow the logic of 4.28 and strengthen the regional production guidance to shape the production process towards achieving better representation and portrayal of the nation/region in which it is made.

Representation should be from a variety of perspectives, including that of the community being represented, and should feature across all genres especially highly culturally-specific ones like drama and comedy. A pre-condition for this is the existence of a TV sector in that community which can produce in all key genres including drama. Regional production guidance could help bring this about by setting measures for criteria which involve credits weighted towards key genres.

We also agree that companies outside of London should be able to bid for the widest possible range of commissions (4.27) and that it is therefore prudent to consider regulation around representation separately.

6 – Regional programming (questions 35-7)

It should be considered how the existing requirements made under section 12 of the *Regional production and regional programme definitions* with regard to Channel 3 could be applied to the BBC in the event that its proposed Scotland channel is approved by Ofcom. A suitable proportion of content for the latter should also be required to be “made in the area for which the service is provided”. In the case of Scotland, Wales and NI such programmes should be categorised as Nations programmes.

Quotas for BBC One Scotland/Proposed BBC Scotland channel

Quotas for BBC Scotland programmes in the BBC Operating Licence should be re-assessed for the proposed BBC Scotland channel which, if approved, would replace them. The proposed channel is predicated on co-commissioning so it is important to understand the nature of the editorial compromises involved in making content for two distinct outlets where commissioners must consider issues of intelligibility and suitability for different audiences, resulting in content not made specifically for the regional or national audience. Co-commissions for the Scotland channel might therefore count towards these quotas only partly, and not in full.

7 – Reporting and compliance (questions 38-41)

At present, Ofcom derives data for its Made Outside London programme titles register via self-reporting. The broadcasters register titles and state which criteria have been met, deriving data from the relevant independent production companies. It is understood that production companies are only required to provide a “yes” or “no” response for each criterion. Ofcom has stated that it does not audit the process but is able to check data if requested.

We suggest that for the register broadcasters are required to provide the number of programmes in each series, and duration; transmission dates and slot; genre; approximate budget or standard genre tariff; and location and registration of company and company status; and that Ofcom should conduct annual regulatory compliance audits.

8 – Other considerations (question 42)

Ofcom’s review of Made Outside London programming is a key element in its role as regulator to monitor and audit how public service broadcasters are delivering benefits across the UK. However, this guidance does not stand alone but forms part of all of Ofcom’s activity as the regulator of PSBs, notably its regulation of BBC delivery.

In terms of the BBC, we note the BBC continues to spend less in Scotland proportionately than it raises in licence fees and we continue to look to the broadcaster to address this disparity since that action alone would result in a significant stimulus to Scotland’s creative sector.