

Ofcom's proposed guidance on regional production and regional programming

Consultation document

The Communications Act makes changes to the existing arrangements for a number of programming quotas that must be met by the public service broadcasters. Ofcom plans to maintain the existing quota levels until a review to be conducted next year in connection with the review of public service broadcasting. In advance of that review, Ofcom proposes to issue guidance on regional production and regional programming that would enable the quotas to be applied consistently to each of the public service broadcasters, and would facilitate compliance monitoring. Ofcom's proposals are set out in a draft document that has been sent to each of the public service broadcasters and to PACT (the Producers' Alliance for Cinema and Television), whose members include many independent regional producers. Consultation on the draft closes on **30 January**; although this is a technical consultation primarily aimed at public service broadcasters, anyone who would like to comment may do so to –

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The deadline for comments is **30 January 2003**.

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Introduction

1. Ofcom is obliged by section 263 of the Communications Act 2003 to include conditions in the licences of commercial public service broadcasters to comply with obligations as to independent production, regional production, original production, and regional programming. There will be similar obligations in the Agreement between the Government and the BBC ('the BBC Agreement'). In the guidance that follows, references to 'broadcasters' includes both licensees and the BBC.
2. This note supplements the statutory provisions and the new licence conditions by setting out the key definitions Ofcom proposes to adopt, and explaining the approach Ofcom intends to take towards interpreting the statutory obligations, and to monitoring compliance with them.
3. The broadcaster will be responsible for compliance, and for the provision of data to demonstrate this if required. Broadcasters will be expected to supply monthly returns in a form agreed by Ofcom. Ofcom would not expect the data supplied by licensees to be audited independently, but may require this if it considers it appropriate.
4. Ofcom plans a full review of each of the programming quotas in 2004, including the appropriate levels to be achieved. However, the intention is that, so far as possible, the definitions set out in this note will continue to apply both before and after the review.

Regional production

5. The Communications Act (sections 286 and 288) and the BBC Agreement will require that a suitable proportion of programmes are made outside the M25, that these constitute a suitable range of programmes, and that a suitable proportion of expenditure is spent on producing these programmes in a suitable range of production centres. In the case of the licensed public service broadcasters, Ofcom has decided that the appropriate means of securing this objective is that licensees should be required to ensure that a specified proportion of the hours they transmit comprises first-run programmes that meet the definition of regional productions below. Ofcom intends to reach agreement with the BBC on a similar arrangement in respect of BBCs 1 and 2.
6. Ofcom plans a full review of the time, range, expenditure and location requirements in 2004. Pending this, the quota levels applying to licensed public service broadcasters will be those reflecting existing obligations, as set out in their licences. In the case of the BBC, this will be a quota agreed with the Corporation on the basis of its existing plans. Where necessary to achieve compliance with the Act, minor changes will be agreed bilaterally with broadcasters to existing quota arrangements, but the intention is that this should not result in a substantive change to current obligations. In addition, broadcasters will be expected to demonstrate that:
 - (a) regional production accounts for a similar range of genres to that achieved in 2002; and
 - (b) the geographical distribution of regional production is as diverse in 2004 as it was in 2002.
7. Ofcom intends to monitor these quotas both against the current definitions (to establish compliance) and the new definitions set out below (to provide an input to the review). It will therefore require broadcasters to provide the necessary information where this is reasonably practicable, and where there are gaps in the information, to identify these to Ofcom, and to make reasonable efforts to fill those gaps. For the purpose of the 2004 review, Ofcom will be seeking estimates from broadcasters of the amount of regional production they expect to air during 2004 that would qualify under the new definitions.
8. In order to count towards the regional production quota by hours, relevant productions must meet two out of the following three criteria:
 - (a) the production company must have a substantive business and production base outside the M25. A base will be taken to be substantive if it is the usual place of employment of executives managing the business, of senior personnel involved in the production in question, and of senior personnel involved in seeking programme commissions;
 - (b) at least 70% of the production budget (excluding the cost of on-screen talent, archive material and copyright costs) must be spent outside the M25; and
 - (c) at least 50% of the production talent (i.e. not on-screen talent) by cost must have their usual place of employment outside the M25. Freelancers

without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25. We shall consider as part of the 2004 review whether this percentage should rise over time.

9. The same criteria would also determine whether a programme counted towards the expenditure quota, in which case the full cost of the programme (less the cost of on-screen talent) would count.
10. The purposes of:
 - (a) requiring relevant productions to comply with two out of the three criteria is to provide flexibility for producers to use some London-based resources, without thwarting the policy objective of the statute, which is to buttress and strengthen regional production in the UK. We shall monitor the balance between regional productions originated by regionally-based and London-based producers, and if it becomes apparent that London-based producers are dominating regional production, we shall consider further changes;
 - (b) excluding on-screen talent from the calculations is to ensure that the quotas remain focussed on regionally-based production expertise rather than more mobile on-screen talent and, importantly, to avoid the quotas being skewed by the significant cost of on-screen talent in some productions (including, but not limited to, drama productions); and
 - (c) an initial 50% quota for production talent is to take account of the fact that a significant proportion of experienced production talent is based within the M25, and that it may take time to alter that position.

Regional programmes

11. Section 287 of the Act requires Channel 3 to provide a sufficient amount and a suitable range of regional programmes (including regional news). Equivalent requirements will apply to BBC1 and BBC2 taken together (including regional news on BBC1) under the BBC Agreement. Pending the 2004 review referred to in paragraph 4 above, Ofcom intends that 'sufficient amount' and 'suitable range' will be interpreted to mean the amount and range achieved by each broadcaster in 2002.
12. Ofcom is also required to ensure that the regulatory regime for every Channel 3 service is appropriate to secure that what appears to Ofcom, in the case of the service, to be a suitable proportion of the local programmes included in the service, consists of programmes made in the area for which the service is provided. Regional Channel 3 licences set that proportion at 90%. For the purpose of determining whether a programme is made in the region, licensees should follow the rules set out in paragraph 8 above, substituting 'in the region' for 'outside the M25'.
13. Regional programmes are those of particular interest to people living in the region (the term "region" is used here to cover Northern Ireland, Scotland and Wales, as well as the English regions). A key consideration in judging regionality will be what distinguishes individual programmes from the output of other regions and of the networks. In particular regional programmes should:
 - (a) deal with subject matter of specific interest to the region and of less interest elsewhere (e.g. regional events, concerns and interests); and
 - (b) be clearly set within the region and/or feature people known to be residents of, or who have close connections with, the region.
14. Co-productions between not more than three parties (BBC or ITV regional services, non-Channel 3 licensees or the BBC or ITV networks) may count, provided at least one party is a regional service, that the programmes receive their first transmission within the relevant regions, and that they satisfy the criteria in paragraph 12 above.
15. Programmes involving more than three parties which share a limited amount of content may be permitted at the discretion of Ofcom. Ofcom would not expect to exercise its discretion unless the amount of shared material was small in proportion to the total, and did not account for a significant proportion of regional programmes on any one regional service.
16. Ofcom anticipates that, in the normal course of events, co-productions will add to the quality and diversity of regional services, rather than simply being cost-cutting exercises. However, if it becomes apparent that this expectation is misplaced, Ofcom will consider further changes.