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# Review of Regional TV Production and Programming Guidance

Consultation

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**CONSULTATION:**

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# Contents

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## Section

1. Overview	1
2. Background	7
3. The changing TV production landscape	14
4. Appraisal of the current regime and the Guidance	29
5. Review proposals	46

## Annex

A1. Responding to this consultation	65
A2. Ofcom's consultation principles	68
A3. Consultation coversheet	69
A4. Consultation questions	70

# 1. Overview

**Ofcom is reviewing the Regional Production and Programming Guidance ('the Guidance')<sup>1</sup> and associated reporting and compliance regime to ensure that the regulatory framework is effective in a rapidly evolving production landscape.**

Nations and regions' production is a crucial part of the UK television production sector, accounting for almost half of public service broadcaster ('PSB') qualifying programme hours<sup>2</sup> in 2017. TV production outside of London helps to disperse and stimulate investment and job opportunities in the sector, throughout the UK. This has resulted in the employment of a broad range of talent with a diversity of editorial perspectives, to create a wide variety of programmes for the enjoyment of UK viewers. This can also assist in strengthening regional production centres for the long term and supporting broader creative and cultural economies across the UK.

To help promote nations and regions' TV production, Ofcom has imposed quotas on the PSBs<sup>3</sup> to ensure that a suitable proportion of their network programmes are made in the UK outside of the M25 ('regional productions'). The BBC and Channel 3 services also have quotas to broadcast localised programmes, including regional news, across different areas of the UK ('regional programming'), and a suitable proportion of these should be made in the local area.

To assist the PSBs in meeting these obligations we have published Guidance. This includes our definitions of regional productions and regional programming, and explains how we expect the PSBs to comply with their quotas, how productions should be allocated to particular geographic areas, as well as how we monitor compliance with the obligations.

This document presents the key findings from our review of the Guidance and the associated regime to date and sets out our proposed changes for consultation.

## What our evidence suggests

- **TV production in the nations and regions is primarily driven by PSBs.** The production sector in the nations and regions has increased its share of PSB programming expenditure over the past decade. There is renewed growth in the independent sector, with more active local production companies in the nations making network programmes for the PSBs.<sup>4</sup> London continues to play a key role in nations and regions' production, as it houses the HQs of many production companies and remains a source of significant talent and resources.
- **There is general industry support for both the guidance-based approach to defining a regional production and the broad substance of the three defining criteria in the Guidance.** There was limited appetite from responses to our call for evidence ('CFE') to adopt a different approach.

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<sup>1</sup> [Regional production and regional programme definitions: Guidance for public service broadcasters, 2010](#)

<sup>2</sup> Refers to only first-run network programmes and excludes news.

<sup>3</sup> The BBC, Channel 3 services, Channel 4 and Channel 5.

<sup>4</sup> [Oliver & Ohlbaum – Regionality trends within the UK production sector](#)

- **However, concerns have been raised about how the Guidance is being applied and complied with.** Responses suggest that some producers may not always follow the Guidance correctly and PSB oversight of the application of the Guidance appears to have been limited. Stakeholders also suggested that improvements to PSB reporting and Ofcom compliance and complaints processes are needed. Many users of the Guidance want more clarity from the document to help ensure consistent interpretation and application.
- **No substantial changes are necessary to the regional programming section of the Guidance,** based on responses from stakeholders.

## What we are proposing

### Changes to the Guidance

- **We propose to add new wording to the Guidance to make clear the overarching policy objective of the regional production regime - to support and strengthen production in the nations and regions – to remind users that the Guidance should be applied in this spirit.**
- **We propose to strengthen two of the criteria that define a regional production, to both clarify how they should be satisfied, and to better ensure the delivery of the policy intent.** This includes adding a requirement for the substantive base<sup>5</sup> to be operational prior to the point of commission, to prevent pop-up and temporary offices from qualifying for this criterion, and a further change making clear what costs should be excluded from the production budget.
- **We propose to exclude self-promotional content from counting towards the regional production quotas.**
- **We propose to add a new explanatory notes section to the Guidance.** This would provide more information about the aims of each of the three regional production criteria<sup>6</sup> to assist industry in applying the Guidance.
- **We propose to make changes to the process for how productions are allocated for quota purposes, to different parts of the UK, to better reflect where productions are made.<sup>7</sup>**
- **We propose to make some small administrative changes to the Guidance to update it.**

### Changes to compliance

- **We will require the PSBs to provide more data to evidence how productions meet the criteria.**
- **We will introduce spot checks on PSBs to monitor how the Guidance is being applied using our information gathering powers.**

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<sup>5</sup> Existing Guidance definition of substantive base: the production company must have a substantive business and production base 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.

<sup>6</sup> See paragraph 2.13

<sup>7</sup> The Guidance requires that each regional production is assigned to either Scotland, Wales or Northern Ireland, to one of three English macro-regions, or as 'multi-nation/region'. This information is used to monitor the range of production centres PSBs are using for regional productions, and in the cases of the BBC and Channel 4, to assess compliance with their nations' production obligations.

- **We will shine a light on how regional productions observe the guidance by publishing more data and expanding and enhancing our publications to increase transparency.**
- **We will detail our complaints process in the Guidance.** There will also be a new process for communicating outcomes of complaints to stakeholders.

#### **Monitoring of the PSBs**

- **We will undertake a survey of producers and the PSBs to benchmark the mix of London and nations and regions talent and resources employed on regional productions and in the commissioning of them.**
- **We will keep under review how each of the PSBs is contributing to the further development of regional production centres.**

*This is a simplified high-level summary only. Please see the full document for more detail.*

## **This review**

**We are reviewing the Guidance to ensure it is effective in a rapidly evolving landscape.** The focus of the review is on how the Guidance and the associated compliance and reporting regimes are working in practice, rather than a full-scale review of the entire UK production sector. The levels of the PSBs' quotas and how the nations and regions are represented and portrayed on television are outside of the review's scope.

## **TV production in the nations and regions**

Our analysis shows:

**Production in the nations and regions is primarily driven by the PSBs.** They spent around £1.1bn in 2017 on network and regional programme commissions made outside the M25, delivering 6,453 hours of new network content. This accounted for almost half (49%) of all the PSBs' total qualifying network hours.

**The production sector in the nations and regions has increased its share of PSB expenditure over the past decade from 39% in 2008 to 43% in 2017.** Total real terms spend on regional productions by the PSBs has actually fallen in recent years (by 8.8%), but PSB spend on network productions overall fell faster (down 9.9%) over the same period.

**There is renewed growth in the independent sector, with more active local production companies making programmes for the PSBs in the nations.** Scotland and Wales have seen particular growth, driven by new out-of-England hours and spend targets for the BBC and quotas for Channel 4, introduced in 2008 and 2010 respectively. Growth in Scotland and Wales is likely to have been a significant factor in the fall in the number of active production companies in some English regions.

**London continues to play a key role in nations and regions' production.** This includes the use of London-based production talent and resources such as post-production houses, and also the volume of productions commissioned from companies with a substantive base in the nations or regions and their head office in London.

## The effectiveness of current regulation

Feedback to our CFE and during industry discussion sessions suggests:

**There is general support for the guidance-based approach to regulation.** Responses indicate that the majority of the industry supports the use of Guidance and the principles underpinning the three criteria that define a regional production.

**However, concerns have been raised about how the criteria are being met.** Responses suggest that in some cases production practices may result in the criteria or other aspects of the Guidance not being applied correctly. In other instances, productions may be compliant with the licence obligations and current Guidance, but are perceived as failing to deliver the overall objective to support regional production across the UK.

**Many users of the Guidance want greater clarity from the document to help ensure its consistent interpretation and application.** Ideas to achieve this, submitted in response to our CFE, included making changes to the criteria; adding more explanatory detail to the Guidance; and setting out how we expect it to be applied in practice.

**The PSBs' oversight to ensure that programmes meet the definition of a regional production appears to have been limited.** Industry feedback and our own experiences suggest that the PSBs may have been overly reliant on producers for this in some cases, and do not seem to have requested the data necessary to evidence how the production has met the regional production definition. We note that in recent days the PSBs have collectively published best practice advice to support producers in delivering productions in line with Ofcom's Guidance.

**Improvements to reporting and compliance processes are needed.** Stakeholders suggested a variety of measures to ensure more effective compliance in this area. These range from: proactive monitoring of the productions counted towards the regional production quotas; increasing the amount of data being published; to the introduction of a transparent complaints process.

## Regional programming

**No substantial changes are necessary to the regional programming section of the Guidance.** Based on responses to the CFE, we do not consider that there are any substantial issues which need addressing in this section of the Guidance. However, we recognise that any changes we propose to make to the regional production criteria will also have some impact on regional programming.

## Our proposals

### Enhanced Guidance

**We propose to add new wording to the Guidance to make clear the overarching policy objective of the regional production regime, which is to support and strengthen production in the nations and regions.** This aims to remind users that the Guidance should be applied in this spirit.

**We propose to strengthen two of the criteria that define a regional production, to both clarify how they should be satisfied and better ensure the delivery of the policy intent.** This includes adding a requirement for the substantive base to be operational prior to the point of commission, to prevent

pop-up and temporary offices from qualifying using this criterion, and making it clear which costs should be included or excluded as part of the production budget.

**We propose to exclude self-promotional content from counting towards the regional production quotas.** This material has very limited value in furthering the regional production policy objective.

**We propose to add a new explanatory notes section to the Guidance.** We intend to provide some supporting material to aid stakeholders' interpretation and application of the criteria.

**We propose to make changes to the process for how productions are allocated for quota purposes, to different parts of the UK, to better reflect where productions are made.** This should make reporting more transparent. It would also update the Guidance to take account of new nations obligations, and rightly enable the BBC and Channel 4 to count more of their regional productions towards quotas for different areas of the UK than is presently the case.

**We propose to make some small administrative changes to the Guidance to update it.** For example, we need to reflect the new regulatory regime for the BBC, effective from 1 April 2017.

### **A robust compliance regime**

**We will require PSBs to provide more data to evidence how productions have met the criteria.** This should help ensure that the PSBs improve their oversight of the delivery of productions made in line with the Guidance, and production companies are more rigorous in applying it.

**We will introduce spot checks on the PSBs to monitor how the Guidance is being applied using our information gathering powers.** In combination with the extra reporting requirements, using our information gathering powers in this way should encourage greater accountability from all those in the production chain, in applying the criteria and delivering titles in line with the Guidance intent.

**We will shine a light on how regional productions observe the Guidance by publishing more data, expanding and enhancing our publications to create greater transparency.** We will increase the amount of information we include in the annual Made Outside London Titles Register. We will also publish this in a more interactive format, to help people find the data most relevant to them.

**We will detail the complaints process in the Guidance.** This will provide stakeholders with a clear route for raising issues with Ofcom about regional production titles. There will also be a new process for communicating outcomes of complaints to stakeholders. If it appears to us that a licence obligation may have been breached, we will consider appropriate enforcement action.

### **Monitoring the PSBs**

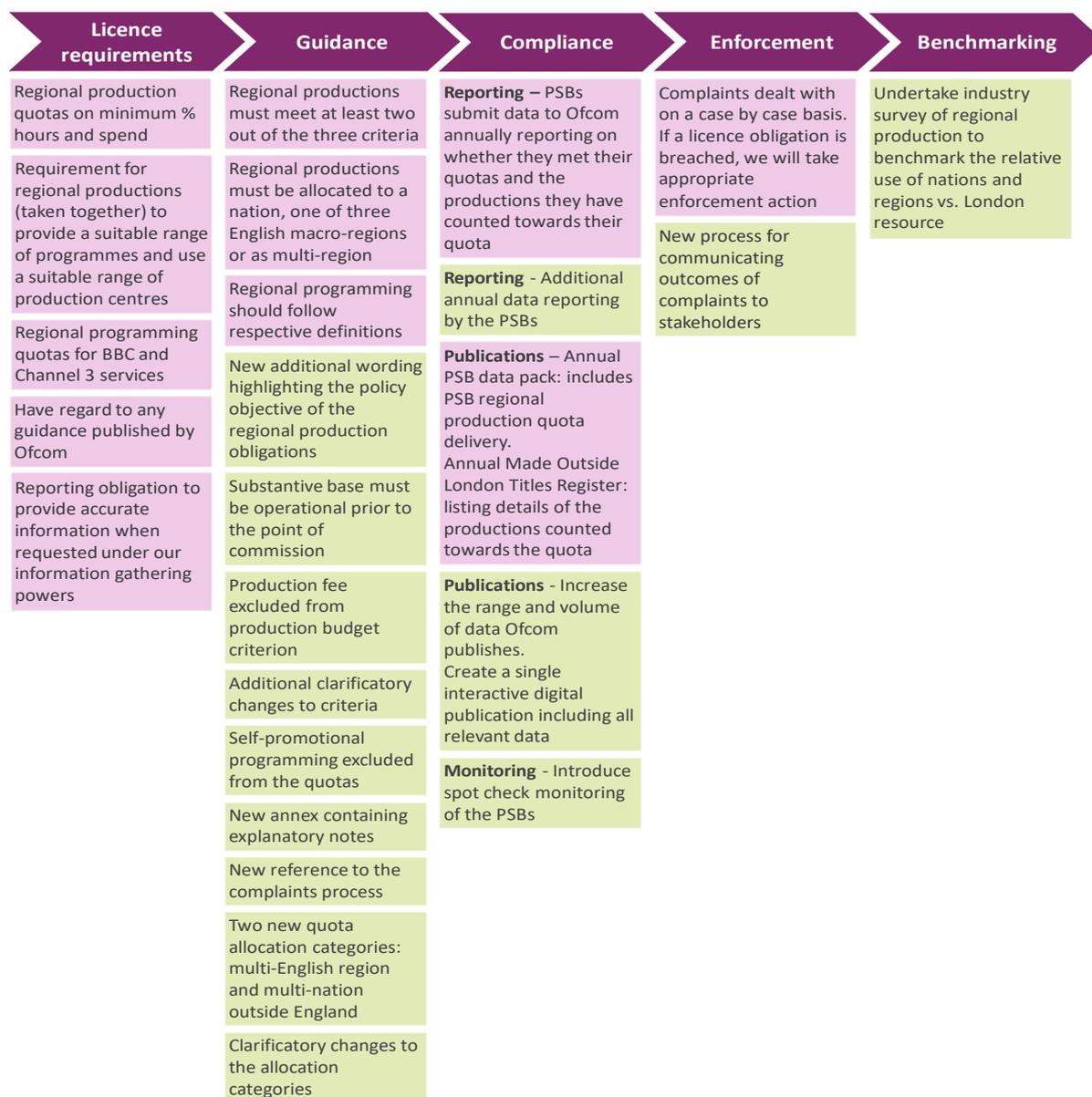
**We will undertake a survey of producers and PSBs to benchmark the mix of London and nations and regions talent and resources employed on regional productions and in the commissioning of them,** as we consider while there have been many positive developments in regional production, more progress can be made to support the development of independent, end-to-end production ecologies in the nations and regions.

**We will keep under review how each of the PSBs are contributing to the further development of regional production centres.** We believe that now is the right time for the PSBs to review their regional production strategies to consider how they can best capitalise on new opportunities flowing

from Channel 4's *4 All the UK* announcement and the upcoming launch of the BBC Scotland channel and the other sector initiatives about to unfold in the nations and regions, to make greater use of regional talent and resources. We will monitor their progress in this area.

## Summary of proposals

Figure 1: Proposed changes to the regional production and regional programming regime



Source: Ofcom. Purple text shows the current regulatory regime. Green text indicates proposed changes.

## Responding to the consultation

The deadline for responses is 27 February 2019. We plan to publish a statement setting out the final outcomes of the review in spring 2019.

## 2. Background

### The legislative context

- 2.1 Under the Communications Act 2003 ('the Act') and the BBC Charter and Agreement, Ofcom is required to ensure that a suitable proportion of the productions that PSBs commission for UK-wide television broadcast<sup>8</sup> ('network programmes') are made in the UK outside of the M25, and additionally for the BBC, in the nations ('regional productions').<sup>9,10</sup>
- 2.2 Ofcom must also ensure that:
- a) these programmes constitute a suitable range of programming (taken as a whole);
  - b) a suitable proportion of each PSB's expenditure on network programmes made in the UK is referable to programme production at different production centres outside the M25 (and in each of the nations for the BBC); and
  - c) those centres constitute a suitable range of such production centres.
- 2.3 Ofcom is also required to ensure that a sufficient amount of time is given to programmes, which are broadcast in more localised areas on the BBC and Channel 3 services, and which are of interest to people living in those areas ('regional programming').<sup>11</sup>
- 2.4 As set out in the Government's White Paper on Communications in 2000, the legislative intention behind the statutory duties on regional production and regional programming was to create "strong regional production centres", which can "create jobs, opportunities for training and gateways into the creative industries at a national level" and that regional production obligations in particular can "help to address geographical imbalances within the national television production industry".<sup>12</sup>

### Our regulatory approach

- 2.5 The following diagram summarises the different tools Ofcom uses to perform its duties in this area. More detail is then set out below.

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<sup>8</sup> Or, in the case of Channel 3, for broadcast in more than one regional area.

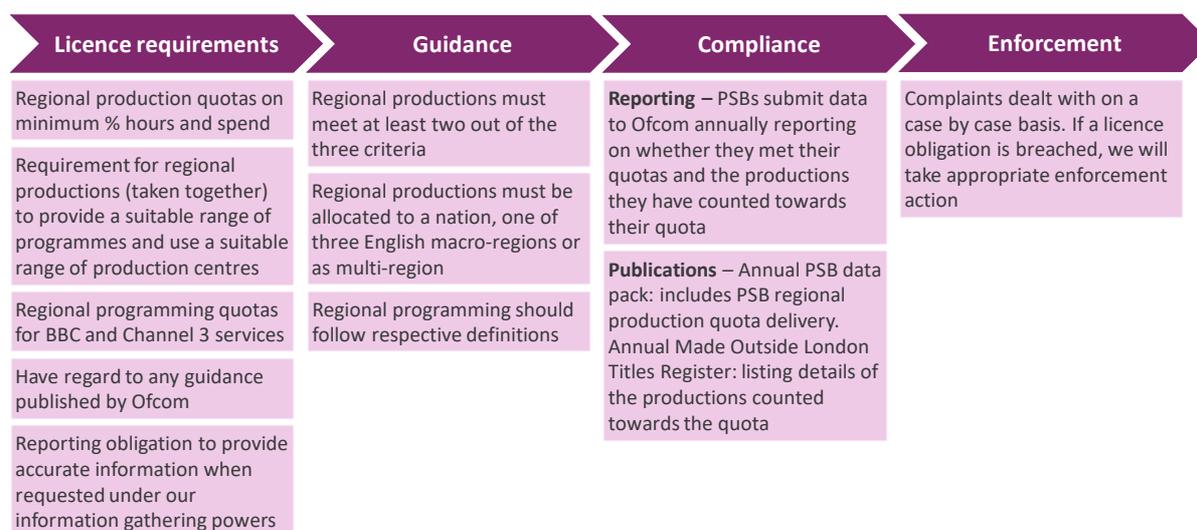
<sup>9</sup> Sections 286 and 288 of the [Communications Act 2003](#) (Channel 3, Channel 4 and Channel 5) and Schedule 2, paragraph 7 of the [BBC Agreement](#).

<sup>10</sup> The term 'regional productions' is set out in the Communications Act 2003. When we use this term, we are referring to network programmes made in the UK outside of the M25, including in Scotland, Wales and Northern Ireland.

<sup>11</sup> Section 287 of the Communications Act 2003 (Channel 3), and Schedule 2, paragraph 6 of the BBC Agreement.

<sup>12</sup> A New Future for Communications 2000, paragraphs 4.46 and 5.7.1-5.7.2.

Figure 2: Current regulatory regional production and regional programming approach



Source: Ofcom

## Licence requirements

### Regional productions

2.6 Ofcom has imposed quotas on the minimum proportion of hours and expenditure that must be allocated to regional productions. The level of the quotas varies by broadcaster and is set out in each of the PSBs’ licences. The BBC is also subject to quotas for production in each nation, and Channel 4 is subject to an ‘out of England’ quota.

Figure 3: Current regional production quotas

		BBC	ITV	Channel 4	Channel 5
<b>Production in the UK outside the M25</b>	% of network programme hours	50%	35%	35%	10%
	% of production spend	50%	35%	35%	10%
<b>Production in the Nations outside of England</b>	% of network programme hours	England outside M25: 30% Scotland: 8% Wales: 4% (5% from 2020) Northern Ireland: 2% (3% from 2020)	N/A	3% (9% from 2020)	N/A
	% of production spend	England outside M25: 28% (30% from 2020) Scotland: 8% Wales: 5% Northern Ireland: 3%	N/A	3% (9% from 2020)	N/A

Source: Ofcom licences for PSBs. Note: BBC quotas apply to BBC television overall, while ITV, Channel 4 and Channel 5 quotas apply only to the main PSB channel.

2.7 Ofcom has also imposed licence conditions on the PSBs which require each of them to ensure that their regional productions (taken together) constitute a suitable range of

programmes, and that their expenditure on regional productions is referable to a suitable range of production centres outside the M25.

- 2.8 It is a requirement of all the PSBs' licences that they must have regard to any guidance issued by Ofcom.

### Regional programming

- 2.9 Ofcom has set regional programming quotas for BBC One and BBC Two<sup>13</sup><sup>14</sup>, and the Channel 3 services. These require output to be of particular interest to people living in the geographic area where the service is provided. A suitable proportion of these programmes should also be made in the area where the service is provided.

- 2.10 As with regional production, it is a requirement of the BBC and Channel 3 licences that they must have regard to any guidance issued by Ofcom.

## Guidance

- 2.11 Ofcom has published *Regional production and regional programme definitions: Guidance for public service broadcasters* ('the Guidance').<sup>15</sup> This sets out the approach we have taken to interpreting the statutory obligations, to deliver the UK Parliament's intent. It includes our definitions of regional productions and regional programming, explains how we expect the PSBs to comply with their quotas, how productions should be allocated to particular geographic areas, as well as how we monitor compliance with the obligations. Together this should help ensure that the PSBs deliver their quotas in a consistent way.

### Regional productions

- 2.12 The regional production requirements are principally industrial policy interventions that aim to support and strengthen the TV production sector and creative economies of the UK's nations and regions. As such the Guidance defines regional productions in terms of inputs rather than stipulating specific outputs, for example the subject matter of regional productions.

- 2.13 The Guidance sets out that, to count towards the regional production hours quota, titles must meet at least two out of the following three criteria:<sup>16</sup>

1. *"the production company must have a substantive business and production base 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*

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<sup>13</sup> These conditions are for BBC One and Two taken together. The BBC also has obligations to provide news programming of national or regional interest on BBC One.

<sup>14</sup> As part of its plans for the new BBC Scotland Channel, the BBC has proposed that the BBC Two Scotland opt-out programming would be discontinued as it would instead be broadcast on the new channel. Ofcom is currently in the process of varying the BBC Operating Licence to take account of these plans: [The new BBC Scotland Channel: Proposed variation to Ofcom's Operating Licence for the BBC's public services](#).

<sup>15</sup> [Regional production and regional programme definitions: Guidance for public service broadcasters, 2010](#).

<sup>16</sup> Only first-run programmes can be counted towards the *regional production* quotas. News programmes are also excluded from the calculation.

*in the production in question, and of senior personnel involved in seeking programme commissions;*

2. *at least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money and copyright costs) must be spent in the UK outside the M25; and*
  3. *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. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25.”<sup>17</sup>*
- 2.14 The same criteria are also used to determine whether a programme contributes to the expenditure quota, in which case the full cost of the production (excluding third-party funding) will be counted towards the quota.<sup>18</sup>
- 2.15 The criteria are based upon three separate core elements of any production: the producer (and specifically their location); the production budget; and the off-screen talent working on the production. The span of the three criteria and the requirements included in each, aim to ensure a production is embedded in the nations or regions. Met individually, they should each go some way to contributing to regional production, but when properly applied in combination they should secure a genuine regional production made in line with the policy intent.
- 2.16 The criteria were deliberately designed to be flexible enough to accommodate the unique nature of each production and the full range of programme genres. They also allow regional productions to be delivered by in-house or external production companies, both from the nations and regions and from London. This approach should deliver economic benefits and job opportunities in the nations and regions, regardless of who the production company is, and also allow programmes to be made across the whole of the UK regardless of whether the expertise, equipment or facilities are available locally or not. It also aims to provide a level playing field for all suppliers, to encourage broadcasters to commission as much programming made in the nations and regions as possible.
- 2.17 When we published the Guidance in 2004, we also specifically set out in the document our reasoning for key aspects of our approach. These explanations included:
- “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;

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<sup>17</sup> The Guidance, paragraph 5.

<sup>18</sup> The Guidance, paragraph 6.

- 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 onscreen talent in some productions (including, but not limited to, drama productions); and
- 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.”

2.18 The Guidance explains that only first-run programmes can be counted towards the regional production quotas. It also sets out that news programmes are excluded from the PSBs’ quota calculations as we accept that it would be impractical to expect network news operations to be based outside London.

### Regional programming

2.19 Our Guidance states that a key consideration in determining what qualifies as regional programming 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 matters 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.”<sup>19</sup>*

2.20 These requirements also aim to help strengthen the TV production sector in the nations and regions, but also have a content output element to them, as they must ensure audiences have access to programmes which are relevant to them and about their local communities.

## Compliance

### Reporting and publications

2.21 The PSBs submit data to Ofcom on an annual basis reporting how they have performed in meeting their regional production and programming obligations. For regional productions, we require the PSBs to submit information relating to hours, expenditure, programme title, producer, and which of the three criteria were met. The PSBs submit further data regarding the programme genre, number of episodes, and time of broadcast for broader Ofcom monitoring purposes.

2.22 Each year we publish data<sup>20</sup> detailing how the PSBs report they have performed in meeting all of their quotas. In addition, since 2010 we have also published the ‘Made outside

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<sup>19</sup> The Guidance, paragraph 14.

<sup>20</sup> [Ofcom PSB Annual Compliance Report, 2018](#).

London programme titles register' ('the Register').<sup>21</sup> This lists all the network programmes that the PSBs report that they made outside of London in a particular year and were counted towards their regional production quotas. It includes the criteria the productions met, the producer, and which nation or macro-region they have been assigned to.

## Enforcement

- 2.23 Presently Ofcom's processes for dealing with regional production complaints are not covered in the Guidance. However, if we were to find that a licensee had breached its licence conditions relating to regional productions and/or (if relevant) regional programming, Ofcom could consider sanctioning the licensee, including the imposition of a financial penalty.

## The review

- 2.24 We announced our intention to review the Guidance in our consultation on the BBC's Operating Licence in March 2017.<sup>22</sup>
- 2.25 We originally set out the scope of this review in our Call for Evidence ('CFE') published in March 2018. The focus is to assess the efficacy of the Guidance, and the associated compliance and reporting regimes. We have looked at the recent performance of the regional production sector; the production process; how the Guidance is applied in practice; and whether it remains appropriate for the current and future shape of the production sector. It is not a full-scale review of the UK production sector. Neither is the review a mechanism through which we would seek to: change our position outlined above regarding first-run programmes and news programmes; make changes to the levels of the PSBs' quotas, or address issues regarding how the nations and regions are represented and portrayed on television.
- 2.26 The CFE also outlined our rationale for the review and what we had initially heard from early engagement with stakeholders around the UK.<sup>23</sup> We received 28 responses to the CFE which have contributed to our understanding of the dynamics of the production sector in the nations and regions, and how the Guidance is being applied in practice.<sup>24</sup>
- 2.27 In addition, we commissioned consultancy work to better understand the performance of the production sector in the nations and regions and how it has changed over time. We have published the consultant's report on our website.<sup>25</sup> This work, alongside our own internal analysis of annual data submitted to Ofcom, by the PSBs, has provided us with an overall picture of the current market, which we summarise in Section 3.
- 2.28 We have also continued to engage with stakeholders since the CFE closed in May through ad-hoc meetings, and further workshops in London, Manchester and Edinburgh with

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<sup>21</sup> [Ofcom Made outside London programmes titles register, 2017](#).

<sup>22</sup> [Holding the BBC to account for the delivery of its mission and public purposes: Consultation, 2017](#), page 41.

<sup>23</sup> [Call for Evidence](#).

<sup>24</sup> Published responses can be found on the Ofcom website [here](#).

<sup>25</sup> [Oliver & Ohlbaum – Regionality trends within the UK production sector](#)

producers, freelancers, industry groups and broadcasters. In these meetings we explored further some of the issues identified in responses to the CFE.

## This consultation

- 2.29 We have used the information we have gathered throughout the review period to date to inform our assessment of the current Guidance and to develop proposals for changes to the Guidance where we consider these necessary.
- 2.30 This document details our proposals for consultation. It also sets out the changes we are planning to make to our compliance and enforcement processes. We are not required to consult on our internal processes but would still welcome views from stakeholders on these.
- 2.31 The deadline for responses is 27 February 2019. We plan to publish a Statement setting out our decisions in spring 2019.

## Impact assessment

- 2.32 Impact assessments, as defined in section 7 of the Act, provide a valuable way to assess options for regulation and show why the proposed option is preferred. Ofcom has also published documentation on its approach to impact assessments.<sup>26</sup>
- 2.33 The analysis presented in this consultation (including the annexes), provides our assessment of the impact of our proposals on stakeholders and therefore constitutes an impact assessment for our proposed changes to the Guidance and wider regime.

## Equality impact assessment

- 2.34 We assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. This is known as an equality impact assessment (EIA). EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.35 It is not apparent to us that the outcome of our review of the Guidance is likely to have any particular impact on any persons with protected characteristics. More generally, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we consider it necessary to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes.

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<sup>26</sup> [Better Policy Making: Ofcom's approach to Impact Assessments, July 2005.](#)

## 3. The changing TV production landscape

### Introduction

- 3.1 In this section we begin by looking at the TV production landscape for the whole of the UK before providing a more detailed analysis of production in the nations and regions, with a specific focus on production qualifying towards the regional production quotas.
- 3.2 For clarity and simplicity, we have chosen in the section to refer to “*regional productions*” which contribute to the regional production quotas (including the BBC’s nations quotas and Channel 4’s Outside England quotas)<sup>27</sup>, as Made Outside London (MOL) productions i.e. “MOL productions”, “MOL hours”, “MOL quotas”. We also distinguish between ‘in-house producers’, which are the internal production arms of the BBC, ITV and Channel 5<sup>28</sup> and ‘external producers’, which include both qualifying<sup>29</sup> and non-qualifying<sup>30</sup> independent production companies.

### The UK television production sector

- 3.3 There have been considerable developments in the TV industry since the launch of the Guidance in 2004. The Act, and especially the introduction of commissioning codes of practice, enabled production companies to better control and exploit the intellectual property in their programmes. Over time this allowed fledgling companies to enter the market and build more sustainable businesses than previously, supplying programming in the UK and increasingly globally too. Producers also benefited from the introduction of the BBC Window of Creative Competition (‘WOCC’) in 2007<sup>31</sup> as well as the establishment of the creative industry tax relief regime in 2012.
- 3.4 With commercial success and the rapid growth of the UK production sector since 2003, there was a wave of consolidation and the creation of a number of so-called ‘super indies’, some of which have since been purchased by large global media companies.
- 3.5 In addition, regional production has also been impacted by: changes to the nations and regions’ quota regimes; the BBC’s decision to move of a number of departments to Salford, completed in 2012; and the subsequent expansion of Salford’s Media City to accommodate ITV among others.

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<sup>27</sup> See Figure 3 in Section 2.

<sup>28</sup> Channel 4’s status as a publisher broadcaster prevents it from producing content itself.

<sup>29</sup> Independent production companies not tied to a UK broadcaster through significant common ownership. The Broadcasting (Independent Productions) Order 1991 (as amended) states that an independent producer is: (i) not employed by a broadcaster; (ii) does not have a shareholding greater than 25% in a UK broadcaster; or (iii) in which no single UK broadcaster has a shareholding greater than 25% or any two or more UK broadcasters have an aggregate shareholding greater than 50%.

<sup>30</sup> Previously qualifying independent production companies in which a group owning a UK broadcaster owns a shareholding greater than 25%.

<sup>31</sup> Which set aside 25% of the BBC’s programme commissions for BBC in-house and external production companies to compete for.

- 3.6 Further significant change is imminent. Channel 4's *4 All the UK* announcement that it will open a new regional HQ in Leeds and two further creative hubs in Glasgow and Bristol, UKTV's decision to open a new regional office in Leeds, and the upcoming launch of the BBC Scotland Channel, expected within the next 12 months, will bring structural change to the regional production sector. Additional opportunities will also be created through a range of other initiatives, including: Creative Scotland's new £3m Broadcast Content Fund to boost TV production in the nation, Creative Skillset's Centre of excellence initiative designed to achieve a talent pipeline for production outside London, and The Farm's recent opening of a new post-production facility in Manchester, promoted as the largest UK regional post production operation to date.
- 3.7 Responses to our CFE also show that an issue of concern for some respondents is the uncertain impact Brexit may have on the sector.

## The TV production landscape in the UK

- 3.8 Expenditure on TV production in the UK typically comes from four sources: the PSBs, UK facing commercial multi-channels<sup>32</sup>, international broadcasters, and - to a lesser extent - subscription video-on-demand (SVOD)<sup>33</sup> services.
- 3.9 PSBs are the biggest investors in TV production in the UK, accounting for at least two-thirds of spend on new UK content.<sup>34</sup> However, in 2017, PSB spend on first-run UK-originated programming fell to £2.7bn in real terms, its lowest level this decade (down £699m since 2008).<sup>35</sup> PSB spend on drama declined the most of any genre, year on year, in 2017. Other genres significantly affected by the reduction in PSB spend were children's programming, comedy, and sport.<sup>36</sup>
- 3.10 However, PSB spend on some genres has grown. Our commissioned analysis suggests that PSBs generally seem to be shifting focus towards non-scripted programming including factual and entertainment programmes.<sup>37</sup>
- 3.11 The growth of third party funding, including co-production arrangements (productions jointly funded by the PSBs and other broadcasters or streaming services), deficit funding from production companies and tax credits, has allowed PSBs to produce higher-cost content than they would have otherwise been able to afford. This has partially offset the real terms decline in overall spend on new content for the PSB channels, particularly when excluding the cyclical nature of sports events.<sup>38</sup>

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<sup>32</sup> The multi-channel sector consists of all television channels, other than the PSB main and portfolio channels, that broadcast to the UK and are licensed by Ofcom.

<sup>33</sup> Paid-for subscription video-on-demand services such as Netflix and Amazon Prime Video.

<sup>34</sup> [Oliver & Ohlbaum report](#), slide 8.

<sup>35</sup> This figure includes non-network PSB regional programming spend: [Ofcom Media Nations 2018](#).

<sup>36</sup> Ofcom Media Nations 2018.

<sup>37</sup> O&O report, slide 11.

<sup>38</sup> Ofcom Media Nations 2018.

- 3.12 Conversely, smaller investors in UK content have increased their spend in recent years. The independent production sector has reported that its revenue from multi-channel commissions has roughly doubled since 2010<sup>39</sup>, and primary international commissions provided the sector with over £0.5 billion in revenue for the first time in 2017.<sup>40</sup> These commissions have tended to come from major overseas broadcasters and global SVOD services, such as Amazon and Netflix, although smaller providers are now also commissioning UK content.<sup>41</sup>
- 3.13 Netflix and Amazon continue to invest heavily in original content worldwide<sup>42</sup> but currently only 9% of Netflix's catalogue hours and 8% of Amazon's comprise UK-originated content, which includes UK acquisitions.<sup>43</sup> Both companies have created opportunities for co-production partnerships for exclusive, or secondary UK broadcast rights.<sup>44</sup> Commissions from global SVOD services accounted for £150m of international primary rights revenue in the UK in 2017, up from 125m in 2016.<sup>45</sup>
- 3.14 The UK's high-end TV tax relief<sup>46</sup> system has also made UK scripted production more appealing for international players and has attracted a growing volume of overseas investment in UK drama production and other premium scripted content. In, 2017, spend from international sources and inward investment in high-end programmes qualifying for tax relief, which includes some co-productions with the PSBs, grew by 9% to £938 million.<sup>47</sup>
- 3.15 London continues to make a major contribution to the TV production sector in the UK, accounting for around 60% (£2bn) of all UK TV production spend in 2017.<sup>48</sup>
- 3.16 Breaking this down, it is possible to see that nearly 90% of UK-wide external TV production company revenues are generated by producers headquartered in London, many of these companies also have further offices in the nations and regions.<sup>49</sup>
- 3.17 Total external production company revenues outside London are broadly growing, but a diminishing share is coming from local<sup>50</sup> out-of-London companies; this is, in part, a symptom of consolidation in the sector both in terms of large production groups and broadcaster ownership which renders them non-qualifying independents as far as the

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<sup>39</sup> [Pact Census 2018 on UK Television Production by O&O](#). The value of commissions from the multichannel sector has grown from £130 million in 2010 to £259 million in 2017.

<sup>40</sup> Pact Census 2018.

<sup>41</sup> Such as Acorn TV (see article [here](#)).

<sup>42</sup> In 2018 Netflix planned to spend £5bn on content globally, while estimates suggest that Amazon Prime Video will have spent approximately £3bn on content (Ofcom Media Nations 2018).

<sup>43</sup> Ofcom Media Nations 2018, both figures taken in March 2018.

<sup>44</sup> Ofcom Media Nations 2018. Netflix has been BBC Worldwide's biggest customer (see article [here](#)) and is ITV's largest customer for its global entertainment arm (see [ITV annual report 2017](#)).

<sup>45</sup> Pact Census 2018.

<sup>46</sup> 'High-end' tax relief is for scripted television projects with a minimum core expenditure of £1 million per broadcast hour, the TV production company can claim a payable cash rebate of up to 25% on UK qualifying expenditure (see [here](#) for more information).

<sup>47</sup> O&O report, slide 12.

<sup>48</sup> O&O report, slide 15.

<sup>49</sup> O&O report, slide 19.

<sup>50</sup> Production companies headquartered in the UK, outside the M25.

PSBs' independent production quotas are concerned. The latest Broadcast Indie Survey stated that 50% of regional companies are now non-qualifying independent producers, up from 0% in 2014.

## TV production in the nations and regions

- 3.18 Media consultants Oliver & Ohlbaum (O&O) estimates that around £1.4bn was spent on TV production in the nations and regions in 2017, accounting for around 40% of total UK spend.<sup>51</sup>
- 3.19 PSBs make the biggest financial contribution to TV production in the nations and regions (around £1.1bn in 2017), commissioning both MOL productions for network TV and in the case of the BBC and Channel 3 non-network regional programming, and which are counted towards the relevant licence quotas. In volume terms, in 2017 the PSBs broadcast 6,453 hours of first-run MOL programming (equating to 49% of all PSB qualifying network hours), with the BBC contributing around half of these. The remaining commissions (£0.3bn) tend to come from commercial PSB portfolio channels and other UK broadcasters.<sup>52</sup>

### PSB MOL spend and hours

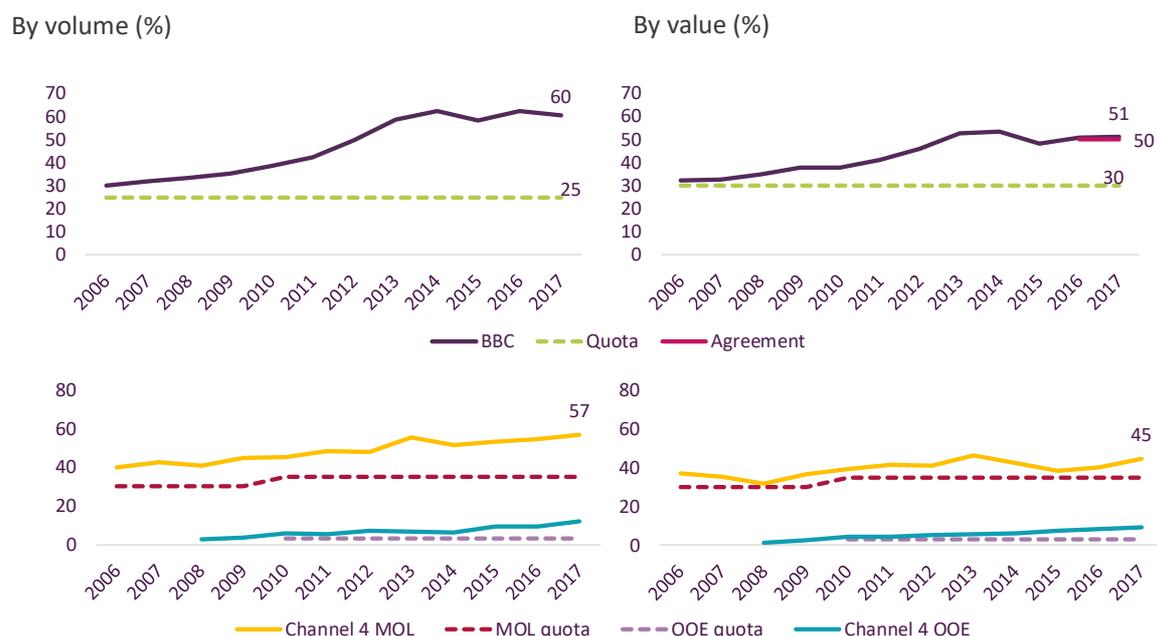
- 3.24 The proportion of PSB expenditure accounted for by MOL programmes has increased over the past decade from 39% in 2008 to 43% in 2017. Total PSB spend on MOL productions has actually declined in real terms in recent years (by 8.8% since 2012), but spend on network productions overall fell faster (down 9.9%) over the same period. Changes to MOL quotas and BBC and Channel 4 commissioning strategies have also influenced this picture.
- 3.25 The BBC is the biggest commissioner of MOL productions. Its quota obligations are greater than the other PSBs and these apply to all of its TV channels, whereas the commercial PSBs each have lower MOL quota obligations for a single service (as outlined in Figure 3 earlier).
- 3.26 Since 2008 the BBC has increased its MOL production output from 35% for spend and 34% for hours, to 51% and 60%, respectively, in 2017. Channel 4's proportions of spend and hours produced outside the M25 have also increased, from 32% and 41% in 2008 to 45% and 57% respectively in 2017 (see Figure 4).

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<sup>51</sup> O&O report, slide 15.

<sup>52</sup> Our breakdown of commissions for the nations and regions does not include international broadcaster spend. We are aware some of this can be attributed to the nations and regions, such as spend on HBO's Game of Thrones, which was partially produced in Northern Ireland.

Figure 4: BBC and Channel 4 quotas and performance: 2006 to 2017



Source: Ofcom / broadcasters

3.27 The effect of regulatory requirements is evident from the patterns in the location of MOL production delivered by the PSBs. The BBC and Channel 4 have both increased the amount of programming produced in the UK’s nations. This has been driven by the 2008 voluntary agreement the BBC made with the BBC Trust, to raise its network spend outside London to 50% by 2016 and for 17% of this to come from Scotland, Wales and Northern Ireland, with an interim target of 12% by 2012. Channel 4’s increased MOL production has been driven by the introduction of an out of England quota, set at 3% in 2010, increasing to 9% from 2020.<sup>53</sup> The new nations quotas set in the BBC Operating Licence<sup>54</sup> and Channel 4’s *4 All the UK* initiative make it likely that this trend of increased commissions from the nations will continue.

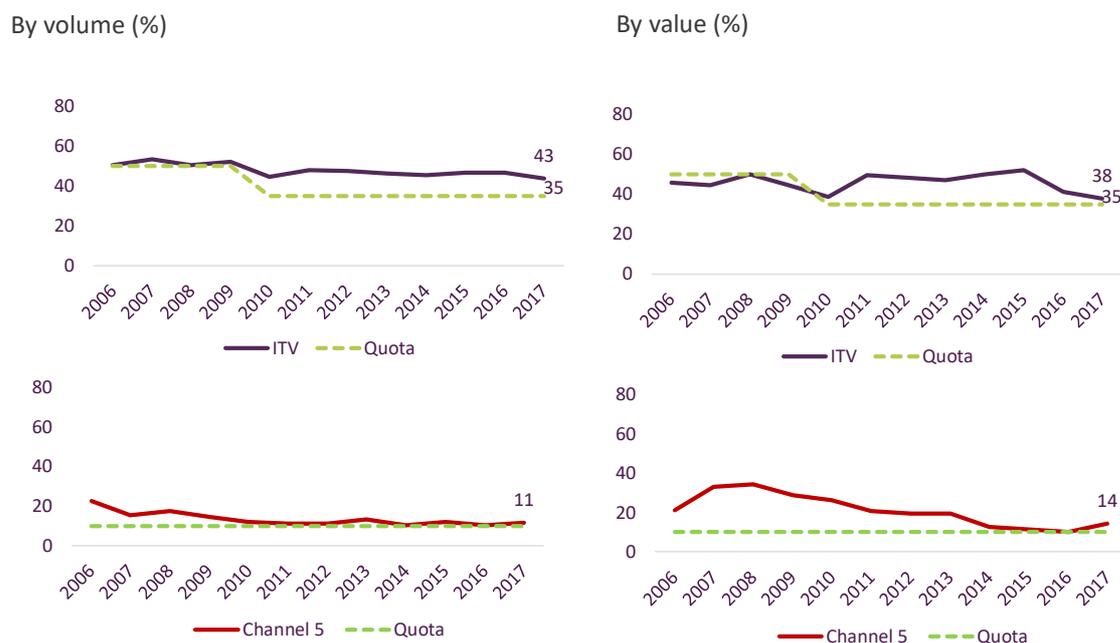
3.28 In contrast, ITV is spending less on MOL productions than a decade ago (see Figure 5). This reflects the 2009 reduction in its MOL quota from 50% to 35%.<sup>55</sup> Channel 5’s 10% quota has remained unchanged, however its spend has declined significantly from 35% in 2008 and now sits much closer to its minimum quota requirements. Neither ITV or Channel 5 have any nations specific quotas and this is reflected in where they commission productions from.

<sup>53</sup> We announced we would increase the quota to 9% in 2014 as part of the Channel 4 relicensing process.

<sup>54</sup> Which came into effect on 1 Jan 2018: [BBC Operating Licence](#).

<sup>55</sup> This was an outcome of Ofcom’s second PSB Review and was designed to keep the costs and benefits of ITV’s PSB licences in balance.

Figure 5: ITV and Channel 5 quotas and performance: 2006 to 2017



Source: Ofcom / broadcasters

3.29 Trends in the genres produced in the nations and regions mirror UK-wide trends, with PSB MOL production spend on children’s programming, drama and sport declining, and spend on non-scripted factual genres increasing. Despite the decline, drama remains one of the key MOL genres with titles such as the BBC’s *Doctor Who* (Wales), and *Poldark* (multi-region) being produced. This is followed by spend on soaps, which include well-known returning series such as *Casualty* (BBC, Wales), *Coronation Street* and *Emmerdale* (ITV, Northern England). For hours, the dominant genre produced outside the M25 is factual, this includes *Nightscreen*<sup>56</sup> (ITV, Midlands and East), which accounted for more than twice the number of hours of any other MOL production in 2017, *The Jeremy Kyle Show* (ITV, Northern England) and *Bargain Hunt* (BBC, Wales), followed by sport, which includes *Wimbledon* and *Match Of The Day* (both BBC, Northern England).

3.30 In terms of the Guidance criteria that PSBs choose to meet, to qualify as MOL productions, the vast majority of titles achieve all three MOL criteria. The following table sets out how the criteria can be combined and the contributions that titles qualifying under each combination made to spend and hours for MOL productions in 2017.

Productions that met	spend	Hours
All three criteria	76%	81%
Substantive base and budget	4%	2%
Substantive base and talent	8%	8%

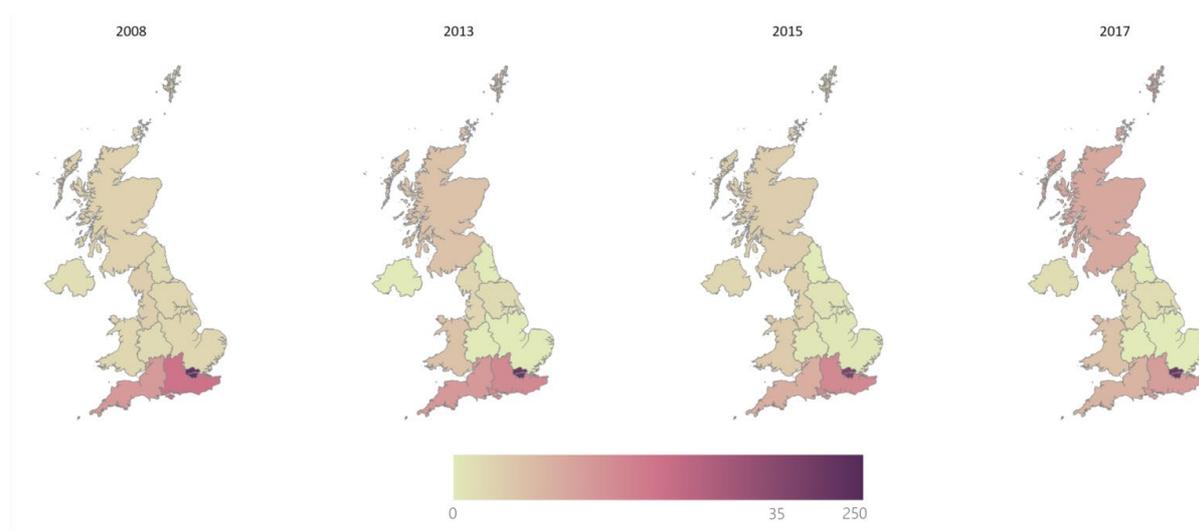
<sup>56</sup> ITV’s *Nightscreen* is broadcast through the night and consists of a sequence of animated pages which promote ITV’s upcoming programmes.

Budget and talent	12%	9%
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### Active production companies

3.31 The number of active local production companies<sup>57</sup> in the nations and regions fell from 132 in 2008 to a low of 105 in 2014, largely because of sector consolidation. Since then, the numbers have begun to increase with 120 companies active in PSB production in 2017. Growth has been particularly apparent in Scotland and Wales (see Figure 6 below, and the interactive version in Annex 5). It is likely that this has been driven by the BBC and Channel 4’s increasing activity outside of England. This growth, however, appears to have come at the expense of areas including the Central Midlands and Anglia where the number of active producers has fallen. This correlates with a significant decline in MOL production spend in the Midlands and East over the last decade. Consolidation may also have contributed to the reduction in the number of production companies in some areas.

Figure 6 – Number of production companies by area



Source: O&O / Ofcom

3.32 London also continues to play a key role in regional production. In 2017, more than half of MOL hours were made by external producers. O&O data indicates that over a third of MOL hours were delivered by external companies whose head office was in London,<sup>58</sup> of which 79% of the hours came from companies which have at least one further office (thus qualifying using a substantive base) in the nations and regions, predominantly in Southern England or Scotland. London based producers without a base outside the M25 accounted for a far smaller proportion of MOL hours (8%).

<sup>57</sup> An active producer is one which has produced any first-run, original content broadcast on the five main PSB channels in that calendar year. Includes companies that have produced non-network regional programmes commissioned by PSBs as well as network productions which did not qualify as MOL. Active producers do not include the internal production arms of BBC, ITV and Channel 5.

<sup>58</sup> O&O report slides 57 and 82.

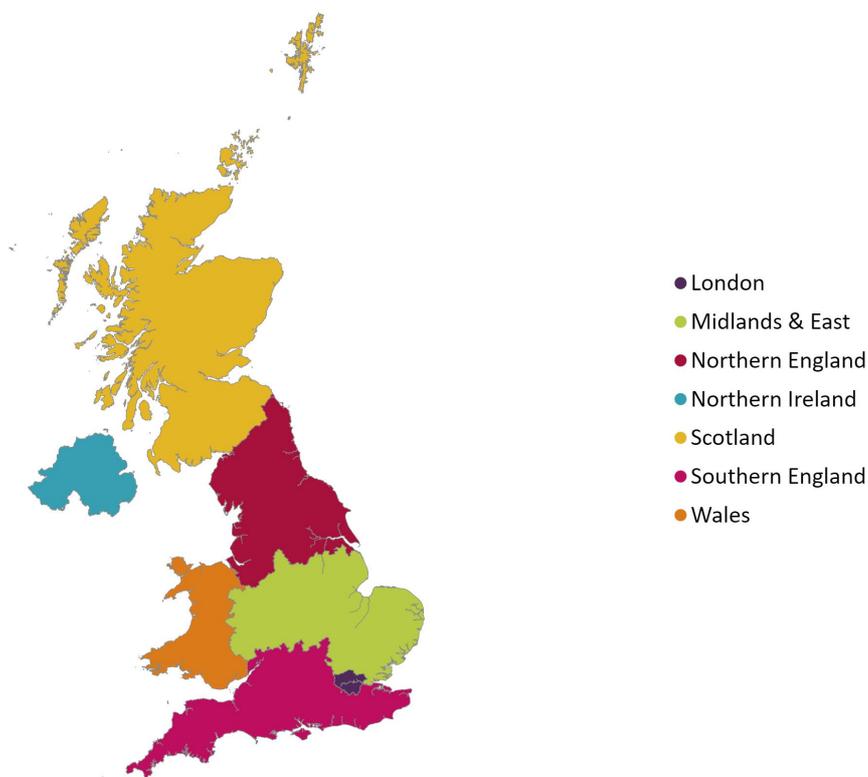
## The regional production sector by nation/macro-region

- 3.33 The Guidance states that in the data submitted by the PSBs to Ofcom, each regional production should be assigned to either Scotland, Wales or Northern Ireland, or to one of the three macro-regions, as shown in Figure 7 below.<sup>59</sup>
- 3.34 Stakeholders have highlighted that the production landscape within each nation/macro-region varies significantly, for example the picture in Northern England is very different depending on whether you are considering the North-West or the North-East. The lack of granular data required to date means these differences aren't currently exposed. Our proposals on data gathering should help address this data gap to some extent (see Section 5).
- 3.35 It is important to note that the analysis below deliberately focuses on the impact of the PSBs' regional production and regional programming obligations on production in the nations and regions. This activity accounts for the majority of TV production in most areas of the UK, but not its totality. For instance, Northern Ireland has had success with international productions such as Game of Thrones, while in Wales S4C adds an additional dimension to the production sector there. Our analysis does not include active production companies commissioned by S4C. In response to our CFE, Teledwyr Annibynnol Cymru (TAC) pointed out that there were 31 commissioned companies based in Wales broadcast on S4C in 2016/17 and 40 in 2017/2018.

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<sup>59</sup> The six areas outside of London were adopted to enable Ofcom to assess whether a suitable proportion of expenditure is spent on producing programmes (made outside the M25) in a suitable range of production centres. See Section 2 for relevant legislation. The macro-regions are based on government office regions; Within England, "Northern England" comprises Yorkshire and Humber, North-West and North-East England; "Midlands & East" comprises West Midlands, East Midlands and the East of England; and "Southern England" comprises South-West and South-East England.

Figure 7 – UK macro-regions



### Scotland

3.36 Throughout the past decade, the Scottish TV production sector has been one of the biggest beneficiaries of the BBC and Channel 4 quota increases and has grown considerably as a result. PSBs have collectively increased the share of MOL spend and hours commissioned in Scotland and the growing number of active producers there reflects this trend.<sup>60</sup> Further growth in the Scottish production sector is also anticipated, driven by the BBC’s recent spending commitments, the proposed new BBC Scotland Channel, Channel 4’s announcement that one of its creative hubs will be based in Glasgow and Creative Scotland’s recently

<u>Scotland</u>	2008	2013	2017
<b>Production expenditure in Scotland</b>			£223 million (£123m PSB MOL, £100m other)
<b>Share of PSB qualifying spend</b>	2.5%	5.9%	5.6%
<b>Share of PSB qualifying hours</b>	1.6%	8.4%	8.5%
<b>Proportion of in-house MOL hours</b>		15%	11%
<b>PSB with the largest share of MOL hours</b>		BBC (86%)	BBC (79%)
<b>No. of active production companies</b>	8	12	20

<sup>60</sup> Data for each table in this section is sourced from O&O, broadcasters and Ofcom. ‘Qualifying spend’ refers to PSB spend on first-run network programmes and excludes the costs of on-screen talent, archive material, sports rights, competition prize money and news. ‘Qualifying hours’ refers to first-run PSB network programmes and excludes news.

announced £3m fund for production in Scotland.

- 3.37 In terms of MOL production, the BBC has had by far the biggest presence in Scotland (79% of MOL hours in 2017), with productions for Channel 4 comprising almost all of the remaining hours. Since 2012, Channel 4 has roughly doubled its spend and hours in Scotland, to meet the increase in its MOL quotas.
- 3.38 Scotland’s MOL productions are mainly commissioned from external producers and cover a wide range of genres. Entertainment and comedy makes up a significant proportion of hours (24%) with returning titles such as *Mrs Brown’s Boys* (BBC), *Eggheads* (BBC) and *Fifteen to One* (Channel 4); along with general factual, with *Homes Under the Hammer* (BBC). Commissions allocated to Scotland also include a large volume of sport, predominately made by London headquartered production companies which have bases in Scotland, often covering events held outside of Scotland. MOL commissions from locally headquartered producers in Scotland accounted for around 25% of total Scottish MOL hours in 2017.
- 3.39 The vast majority of BBC MOL productions allocated to Scotland meet all three of the Guidance criteria, which is aided by the BBC’s in-house presence there. Around one quarter of Channel 4’s productions in 2017 also met all three criteria. However, this picture has fluctuated significantly over time as one high volume show can significantly influence the figures.

## Wales

- 3.40 The production sector in Wales is unique within the UK, as around a third of spend on originations in Wales is on indigenous language programmes commissioned by S4C.<sup>61</sup> MOL productions<sup>62</sup> from Wales account for a smaller share of PSBs’ total MOL spend and hours than Scotland but have also increased since 2008. There has been a slight fall in the proportion of total MOL hours made in Wales since a peak of 2.7% in 2015. As with other nations, the BBC is the PSB with the biggest presence in Wales (76% of MOL hours in 2017).
- 3.41 Factual entertainment is a key genre in Wales, making up 34% of Welsh MOL hours in 2017, with the BBC’s *Bargain Hunt* consistently contributing a significant volume of hours allocated to Wales. Production of the show moved from Southern England to Wales in 2015. General and specialist factual together account for a sizable proportion of MOL hours in Wales (41%), with over double the

Wales	2008	2013	2017
Production expenditure in Wales			£174 million (£76m PSB MOL, £98m other)
Share of PSB qualifying spend	1.7%	3.3%	3.4%
Share of PSB qualifying hours	0.9%	1.4%	2.4%
Proportion of in-house MOL hours		56%	60%
PSB with the largest share of MOL hours		BBC (82%)	BBC (76%)
No. of active production companies	7	12	13

<sup>61</sup> O&O report, slide 80.

<sup>62</sup> Does not include S4C productions.

volume of general factual being made in Wales in 2017 (72 hours) compared to 2016 (31 hours), driven by increased Channel 4 commissioning from the nation.

- 3.42 Soaps and drama are also mainstays of the production sector in Wales with the BBC’s in-house drama village in Roath Lock home to the returning series of *Casualty*, *Sherlock* and *Doctor Who*. Despite these two genres accounting for less than a fifth of MOL qualifying hours in Wales, their high cost per hour means they make a disproportionate contribution to spend in Wales.
- 3.43 The majority of MOL production in Wales is achieved in-house, however the number of active external production companies<sup>63</sup> making MOL programmes in Wales has risen in recent years, mainly via more factual commissioning from Channel 4. In 2017 around a third of external MOL commissions were made by local producers, and those productions in turn accounted for 14% of overall MOL hours in Wales.
- 3.44 The BBC’s in-house presence in Wales means that the vast majority of MOL hours allocated to Wales meet all three criteria, with only a small proportion (c.5%) not meeting the substantive base criterion in 2017.

## Northern Ireland

3.45 Northern Ireland is the smallest of the UK nations’ production markets. Its share of MOL hours has only exceeded 1% once since 2010. Its share of spend has also been low during this period but has been just over 1% for the last two years, driven by BBC drama productions such as *Line of Duty* and *The Fall*.

3.46 The BBC is the biggest commissioner and producer of MOL hours (84% in 2017) in Northern Ireland, with Channel 4 accounting for almost all the remainder (14%). Beyond the PSBs, HBO’s *Game of Thrones* and the animation sector (which is more dependent on international commissions than PSB), have been making significant contributions to the production sector in Northern Ireland.

3.47 As with trends in UK-wide PSB spend, factual content accounts for an increasing amount of content made in Northern Ireland e.g. the BBC’s *Wanted Down Under*. In 2017 the genre was the largest contributor to MOL hours in Northern Ireland (67%). Sport was previously more of a feature, with the *Moto GP* being produced by Century TV until the BBC ceased to hold the rights in 2014. In contrast to UK-wide trends, MOL spend on children’s programming has increased in Northern Ireland over the last few years.

<u>Northern Ireland</u>	2008	2013	2017
Production expenditure in Northern Ireland			£65 million (£26m PSB MOL, £39m other)
Share of PSB qualifying spend	0.3%	1.1%	1.2%
Share of PSB qualifying hours	0.1%	0.9%	0.9%
Proportion of in-house MOL hours		32%	48%
PSB with the largest share of MOL hours		BBC (85%)	BBC (84%)
No. of active production companies	5	2	6

<sup>63</sup> Active producers (as defined in footnote 57) in Wales do not include producers commissioned by S4C.

- 3.48 The split of MOL titles made in-house and externally is roughly equal overall, with commissioning from Channel 4 offsetting the slightly higher proportion of in-house productions from the BBC. London-based companies produced recent high value dramas *Line of Duty* and *The Fall* (both filmed in Northern Ireland). The majority of hours made by Northern Ireland’s local producers for the PSBs consist of factual shows, they also produce a number of entertainment titles.<sup>64</sup>
- 3.49 Almost all in-house titles allocated to Northern Ireland in 2017 met all three criteria in the Guidance. For external producers, the picture is very different, with over one-third of external MOL hours coming from productions that did not meet the substantive base criterion, up from one-fifth in 2016.

### Midlands and East

- 3.50 The Midlands and East is the second smallest production area. MOL spend has dropped significantly over the last decade, with BBC spend in the region falling by more than half since 2012, when popular dramas *Line of Duty* and *Hustle* were made there.
- 3.51 Hours have also dropped since 2008. The scale of the decline is masked by ITV’s *Nightscreen*, a production which consists of a sequence of animated pages which promote ITV’s upcoming programmes using text and stills or programme graphics. The title has constituted most of the hours in the Midlands and East for many years. In 2017 it contributed around 85% of the total MOL hours produced in the region.
- 3.52 The overall genre range made in the region is narrow, limited mainly to factual programmes, a small amount of sport, and one returning soap, BBC’s *Doctors*, which makes up a significant proportion of spend in the region.
- 3.53 The number of active producers in the Midlands and East has fallen significantly since 2008, from 13 to four. Hours in the region are dominated by external producers, *Doctors* (BBC) has essentially been the only in-house production in the last two years and does not meet the substantive base criterion. 82% of overall MOL hours allocated to the Midlands and East met all three MOL criteria in 2017, 92% when looking at externally produced hours only, although the scale of *Nightscreen* (which met all three criteria) skews these figures considerably.

Midlands & East	2008	2013	2017
Production expenditure in Midlands & East			£73 million (£30m PSB MOL, £43m other)
Share of PSB qualifying spend	6.7%	2.1%	1.5%
Share of PSB qualifying hours	8.9%	6.1%	6.0%
Proportion of in-house MOL hours		18%	11%
PSB with the largest share of MOL hours		ITV (64%)	ITV (70%)
No. of active production companies	13	4	4

<sup>64</sup> O&O report, slide 80.

## Northern England

3.54 Northern England accounts for the biggest proportion of production spend outside London, with the BBC, Channel 4 and ITV all making significant contributions. Since the BBC's move to Salford MOL spend and hours in the region increased but have levelled off more recently with peaks in 2014 and 2016 due to major sporting events. Channel 5's contribution in the area is small but has been increasing year on year since 2012.

3.55 Production is dominated by the BBC's and ITV's in-house units in Salford, which together accounted for 73% of MOL hours from the region in 2017. The genre range is wide, with sport and soaps being the most dominant areas. Well-known returning soaps such as ITV's *Coronation Street* and *Emmerdale* (both produced in-house), as well as Channel 4's *Hollyoaks* have made a large contribution to MOL spend in the region for years, as have BBC's *Wimbledon* and *Match of the Day*, (both produced in-house).

3.56 Since 2008, the number of active production companies in the region overall has fallen, this is partially due to a significant reduction in the North-East of England (six in 2008 down to two in 2017). Despite being less dominant in Northern England than other areas, external producers have made most of the region's PSB drama productions for a number of years, including the current Channel 4 returning series *No Offence*. Commissions from local producers in Northern England accounted for around 15% of externally commissioned hours in 2017, but because of the high proportion of in-house commissions in the region this amounts to only around 4% of total MOL hours from the region.

3.57 In-house productions are more likely to meet all three MOL criteria than external productions (99% vs 79%). For example, almost all hours of sports and soaps allocated to Northern England meet all three criteria as they are made almost exclusively in-house by BBC and ITV.

<u>Northern England</u>	2008	2013	2017
Production expenditure in Northern England			£543 million (£437m PSB MOL, £106m other)
Share of PSB qualifying spend	17.4%	19.9%	20.2%
Share of PSB qualifying hours	12.7%	21.1%	19.7%
Proportion of in-house MOL hours		68%	73%
PSB with the largest share of MOL hours		BBC (50%)	BBC (51%)
No. of active production companies	22	14	16

## Southern England

3.58 In 2017, MOL expenditure in Southern England was slightly higher than in 2016, but accounted for a lower share of MOL spend in Southern England than any other year since 2008. The fall in PSB spend for this region is likely to have been driven by changes in ITV's commissioning strategy. In the years between 2011 and 2015, the share of ITV's spend in this region consistently exceeded 20%, but fell to 7.4% in 2016. The reduction in sports commissions from the region since 2015 may account for this change.

3.59 Factual is currently a key genre for Southern England with almost 60% of MOL hours allocated to this region comprising specialist factual, general factual, or factual entertainment. Channel 4 is a key contributor to spend in Southern England, and its proportion of MOL spend and hours commissioned from Southern England increased in 2017 (from 33% of hours in 2016 to 39%). The addition of *The Great British Bake Off*, and coverage of Formula 1 and the Women's European Football Championships has contributed to this.

3.60 Most MOL production in Southern England is sourced from external production companies, with producers in the region making factual, drama, entertainment and comedy output. Aside from London, Southern England is the area with the largest number of active production companies, although this has fallen in recent years.

3.61 In 2017, 8% of MOL hours came from productions that did not meet the substantive base criterion, down from 13% in 2016. Local producers in Southern England accounted for 13% of the region's MOL hours in 2017, this figure was similar for the two previous years.

3.62 In-house production hours allocated to Southern England are more likely to meet all three MOL criteria than hours of external productions (93% vs 55% in 2017). 22% of hours allocated to Southern England in 2017 did not choose to meet the spend criterion, the largest proportion of any nation/macro-region (this figure was much higher in 2017 compared with previous years).

<u>Southern England</u>	2008	2013	2017
<b>Production expenditure in Southern England</b>			£289 million (£203m PSB MOL, £86m other)
<b>Share of PSB qualifying spend</b>	10.2%	13.6%	9.7%
<b>Share of PSB qualifying hours</b>	11.0%	11.9%	10.4%
<b>Proportion of in-house MOL hours</b>		36%	23%
<b>PSB with the largest share of MOL hours</b>		BBC (43%)	BBC (41%) C4 (39%)
<b>No. of active production companies</b>	54	48	40

## Multi-region (other)

3.63 Multi-region as an allocation category was added to the Guidance in 2011 as a heading under which productions could be classified if they met the talent and spend criteria only but could not be allocated to a single macro-region.

3.64 Fewer than 1% of MOL hours overall were allocated to this category in 2017, although it accounted for 2% of spend. This is likely due to the allocation of higher cost drama to this

category. For example, *Peaky Blinders* (BBC), was produced by London based producer Tiger Aspect and filmed in a range of places outside the M25, including Birmingham, Yorkshire, Liverpool and Manchester. The entertainment and comedy genres are also allocated by the PSBs to this category.

## 4. Appraisal of the current regime and the Guidance

### Introduction

- 4.1 In this Section we outline the key findings from our assessment of the current Guidance and the broader regime. In carrying out our evaluation we have taken into consideration the results from our data analysis (Section 3), the views of stakeholders, captured via the 28 responses to the CFE we published earlier this year, and through the series of industry workshops that we have hosted across the UK. This feedback has provided detailed information about how the current regime is operating, along with ideas and suggestions for how it could be amended and improved.
- 4.2 We have closely considered all stakeholder responses, which have also served to extend our knowledge in this area. Because of the large volume of information and level of detail many of the CFE responses contained, we have restricted this chapter to key themes and provided a more comprehensive summary of the responses and analysis of stakeholders' proposals for change at Annex 6.

### The regional production regime

- 4.3 The CFE responses and our workshop discussions indicate that most stakeholders do not have a significant appetite for a radically different system for delivering the regional production obligations. PSBs that responded warned against making substantial changes to the Guidance and noted that any change would likely increase the regulatory burden and impact their ability to meet the quotas.
- 4.4 Of those that did call for an alternative approach, Directors UK suggested that Ofcom could adopt a points-based system, particularly for the off-screen talent criterion, while some considered that a step change is required to refocus the regime on sustainability when delivering production within the nations and regions. The PSBs' quotas were largely unmentioned, although some stakeholders wanted to see the introduction of genre quotas and nation-specific quotas for all of the PSBs. However, most stakeholders seemed content with the guidance-based approach and the fundamentals underpinning the three criteria. Responses instead primarily focused on the application and interpretation of the current Guidance.
- 4.5 Many stakeholders felt strongly that, although the concept behind the existing approach continued to be attractive, the current application, monitoring, and enforcement of the Guidance in practice is not always effective in achieving the policy objective of supporting and strengthening production beyond the M25. As a result, there was a general desire to see the existing regime applied in a more rigorous manner to better deliver this outcome.
- 4.6 The substantive base criterion was the topic that generated the greatest volume of responses to our CFE. Tightening this criterion was considered by many as key to improving

4.7 the regime. In contrast, broadcasters suggested that the criterion contributes effectively to the objective of strengthening regional production, whilst providing important flexibility. We received fewer responses on the other two criteria. The production budget criterion produced the greatest consensus from stakeholders, the majority of whom felt that requiring a minimum of 70% of the production budget to be spent outside London is the right level. Meanwhile, views on the production talent criterion were polarised by location, genre, and stakeholder group, with opinions diverging on the availability of talent in the nations and regions.

4.8 Concerns on all three criteria, and the Guidance more broadly, generally fell into the following key areas:

- How the criteria are fulfilled;
  - inaccurate application of the Guidance;
  - productions where the Guidance is applied accurately but does not appear to deliver the policy intent;
  - practices in-line with the Guidance and policy intent which may be perceived as unfair; and
  - additional points raised in relation to the criteria, including areas which require further clarification.
- the role of London and its impact on sustainable production in the nations and regions; and
- concerns around processes including: data gathering and reporting by the PSBs, Ofcom publications, and Ofcom’s monitoring and complaints process.

4.9 We explore each of these key themes in more detail below.

## How the criteria are fulfilled

4.10 The flexible nature of the current criteria, which define whether a production can qualify towards the regional production quotas, has resulted in concerns around how some producers and broadcasters have interpreted and applied them.

4.11 Stakeholders provided examples of titles they considered might not have properly met the criteria and therefore should not have been counted towards the regional production quotas. They also provided examples of titles that they considered met the letter of the criteria, but did not appear to support or strengthen the creative economies in the nations and regions. In both areas, stakeholders were concerned that the resulting outcome is a regime that may not always deliver the policy objective effectively.

4.12 Some stakeholders also raised concerns about titles which we consider to be in line with both the criteria and the underlying policy intent. We have set out examples below, along with our reasoning for why we do not consider that these require a remedy. Finally, we

consider additional points raised by stakeholders about the criteria, many of which centre on the need for further clarification of the existing Guidance.

## Inaccurate application of the Guidance

- 4.13 We received anecdotal evidence of how the different criteria may not always be correctly applied. Although we have not verified these individual cases, we take such allegations seriously, and these practices would clearly be counter to the objective of the regional production regime. We also recognise that many stakeholders are very conscious of the importance of meeting the criteria in an appropriate manner and work hard to do so. This has also been apparent from our engagement with them.
- 4.14 The anecdotal evidence we received included:
- a) **Substantive base:** there were concerns from some that companies might claim to have an office in the nations and regions with a listed address, but, in practice, no staff are based there and the production is not really operating from that office. Such operations are known as “brass plate” offices and do not meet the substantive base definition. Some suggested this practice can occur when London-based producers pitch for regional commissions without a substantive base in the nations or regions, and then set up a “brass plate” office once they win the commission and claim to have met the criterion whilst making the production from their London base.
  - b) **Production budget:** stakeholders told us that there are cases where companies or individuals based in the nations and regions (e.g. post production houses and executive producers) have been offered payment to be credited on a production, when they have had no such involvement and the work has actually been carried out in London. Such payments appear to be offered to help the production exceed the 70% budget threshold and therefore qualify as regional. Such practices may also help a production meet the off-screen talent criterion.
  - c) **Off-screen talent:** there were also cases presented to us where freelance staff based in London claim to have been asked by production companies to list their address as that of a friend or family member who lives outside the M25, to count them towards the 50% threshold for nations and regions-based talent. Some also highlighted examples of crewing companies based outside the M25 being used to employ the off-screen talent so staff hired through that company can be counted as regional, regardless of their usual place of work or home address. This practice could also be used to help a production meet the production budget criterion.
- 4.15 Some respondents to the CFE suggested ways in which some of the practices outlined above could be prevented in the future. Scottish respondents, Pact and the Indie Club suggested that we change “usual place of employment” within the substantive base criterion to “domicile for tax purposes” to ensure staff are genuinely based within the claimed office. Tinopolis suggested that Ofcom should take responsibility for viewing and verifying production companies’ substantive bases and publishing an approved supplier list for broadcasters to commission from. In discussions, some stakeholders suggested that

freelance staff should be required to submit proof of their home address to demonstrate their compatibility with the off-screen talent criterion.

- 4.16 We are of the view that proportionate changes to the regime are required to ensure that the PSBs and their suppliers are more rigorous in their application of the Guidance so that the criteria are applied correctly and consistently. We set out detailed proposals in Section 5.

## Productions where the Guidance is applied accurately but does not appear to deliver the policy intent

### Practices which do not deliver the policy intent

- 4.17 From our analysis of the titles register, and from listening to the experiences of stakeholders, it is clear it is possible to use the flexibility the Guidance currently offers to meet the criteria in ways that are not in line with, and do not deliver, the policy intent behind the quotas. For example:
- a) **Substantive base:** The use of offices which are set up in the nations and regions just for the duration of a production, which may in effect just be location offices. While these offices may be fully functional during the time of production it is questionable whether such set ups are really meeting all three aspects of the substantive base criterion, particularly “seeking commissions” as this should help delineate a location production office from a genuine substantive base. This is of particular concern when a production only meets substantive base and one other criterion (10% of regional hours and 12% of spend in 2017). Once the production has been completed the ongoing benefits for the local production economy which should flow from a substantive base would not be delivered, thus limiting the contribution that production has made towards the policy objective.
  - b) **Off-screen talent:** Stakeholders cite the practice of this criterion being met through advertising London-based production jobs which must be filled by freelance talent based outside of London. Fulfilling the criterion by hiring regional freelancers to work in London to help a production qualify as made outside London is somewhat counter to the intention of the regional production obligations. It also means that employment opportunities that could be offered to talent in their local area (with all the accompanying benefits to both the individual and the local production ecology) are absent.
- 4.18 Some stakeholders, including the BBC and Channel 4, suggested that adding greater clarity to the Guidance on how each of the criteria should be fulfilled could help to address practices which we consider are not in-line with the policy intent. Some specific queries raised where we might want to provide clarity included: whether all three elements of the substantive base criterion need to be met; whether overheads should be counted towards the production budget criterion; and how staff employed through the hiring of a studio should be treated in relation to the talent criterion. Some stakeholders suggested making more substantial changes to the actual criteria. Both an individual stakeholder and the

Ofcom Advisory Committee for Wales suggested that the substantive base criterion should be amended to require offices to be open for a set period of time before they can qualify, and at some of the stakeholder workshops it was suggested that the office should be open at the point of commission. There was also a proposal made by Channel 4 and the BBC to initiate a working group to share best practice and bring more consistency to how the criteria are fulfilled.

- 4.19 In some of these instances, we consider it would be helpful to provide additional clarification around the criteria to aid stakeholder application of the Guidance in a way which is consistently in-line with the policy intent (see Section 5 for more detail). However, in other cases additional guidance may unhelpfully limit the valuable flexibility of the Guidance which has been deliberately drafted to accommodate the unique nature of each production<sup>65</sup>.

#### Types of content which do not deliver the policy intent

- 4.20 In addition to the issues uncovered around different aspects of the production process which do not necessarily contribute to the intent of the policy, we have also identified a type of content which we consider is of very limited value in furthering the regional production policy objective.
- 4.21 In assessing the range of programming made under the regional production regime in recent years, we identified ITV's *Nightscreen* as the title consistently generating the most hours from any PSB (over 550 hours in 2017), and more than double the hours of the next biggest title by volume in 2017. *Nightscreen* is a low cost, low tech, longform self-promotional<sup>66</sup> tool for ITV. It consists of a sequence of animated pages which promote ITV's upcoming programmes, features and special events. It is broadcast during the night for between one to two hours, most days of the week. For each programme that is featured on *Nightscreen*, viewers are shown a still from the show or the programme's logo, along with some promotional text (see Figure 8). As *Nightscreen* meets the broad definition of programme as set out in the Act<sup>67</sup>, ITV can currently count it towards its regional production quota.

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<sup>65</sup> For more information, please refer back to paragraph 2.16.

<sup>66</sup> Self-promotions are defined in [Part Two \(The Cross-promotion Code\) of the Broadcasting Code](#) as "promotions on a channel for that same channel and/or for programmes broadcast on that channel".

<sup>67</sup> Section 405 of the Communications Act defines "television programme" as "any programme (with or without sounds) which is produced wholly or partly to be seen on television; and consists of moving or still images or of legible text or of a combination of those things".

Figure 8: Screen-grabs from ITV's Nightscreen



Source: ITV, 16 October 2018

- 4.22 *Nightscreen's* content is dictated by ITV's schedule and the visuals are likely to be supplied by either the broadcaster or the supplier of the programme that is being promoted. This offers limited creative scope in terms of the content of the production. We consider such output is unlikely to create many jobs or development opportunities for production talent, as all of the roles associated with the usual pre-production, filming and director-led editing stages of a standard TV production are absent. As a result, the contribution to a local creative economy may also be limited.
- 4.23 We are therefore of the view that counting such self-promotional content towards the regional production quota provides very limited value in terms of contributing towards the policy objective of helping to strengthen the TV production sector outside London.<sup>68</sup>
- 4.24 Our proposals for addressing this issue are set out in Section 5.

### Practices in-line with the Guidance and policy intent but which may be perceived as unfair

- 4.25 It is important to highlight that we received some examples of productions which some stakeholders consider should not be counted towards the regional production quotas, but

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<sup>68</sup> We also note that ITV has an obligation under its licence to provide a suitable range of different programmes made outside the M25, and the large number of hours of Nightscreen content may also be relevant to that obligation.

which nonetheless do meet the criteria and which we believe do contribute towards the policy intent. Examples include: production companies that have offices based just outside the M25 or where filming on a production takes place just outside the M25; and sporting events which have taken place outside the region or nation the production has been allocated to for quota purposes.

- 4.26 With regards to the M25 boundary, this is set by the UK Parliament in the Act and is not something that this review can change. It is worth noting that no matter where the boundary for 'London' is set, there will always be examples of offices or filming which locate just beyond this. Under the current obligations, companies based just outside the M25 have just as much right as companies further away from London to contribute to the regional production quotas. We consider it is more important to ensure that those production companies are meeting the criteria correctly and that the PSBs are not solely relying on meeting their regional production obligations from just beyond the M25. They are required by the Act and their licences to use a suitable range of production centres across the UK. This is monitored as part of our annual reporting in this area.
- 4.27 The example of sporting events which have taken place outside the region or nation the production has been allocated to generated particularly strong views among some stakeholders. This included the example of London sporting events counting as regional productions with some stakeholders questioning how such events can ever qualify as such. However, our view is that in applying the criteria correctly, such productions can be examples of the obligations working well. To have truly vibrant and diverse creative economies outside of London, production companies based in the nations and regions need to have the opportunities to make the widest possible range of programmes. This includes having the ability to bid for commissions for London-based sporting events or other shows with a focus beyond the immediately locality of the production company. These commissions can provide opportunities to develop a breadth of talent and skills, which might otherwise not be available, and while not necessarily taking place in that nation or region, still bring additional investment to the creative economies outside of London.

### **Additional points raised in relation to the criteria**

- 4.28 The views gathered in response to the CFE and our discussions with stakeholders also identified several other points about the criteria, including areas where they may need further clarification, or ways in which they could be enhanced. We have summarised these below.

### **Co-productions and third-party funding**

- 4.29 A number of stakeholders queried whether money from third parties should be included as part of the production budget when assessing whether the 70% threshold has been met for the production budget criterion, or whether only the PSB's contribution to that particular production counts. Currently the Guidance does not explicitly address this issue. Contributions from third parties towards the cost of productions, for example through co-

production arrangements, deficit funding from the production companies and tax credits are playing an increasingly important role in the funding of original PSB content. Over the last decade the combined third-party funding for first-run UK-originated content across the BBC, Channel 4 and Channel 5 has more than doubled from £147m in 2008 to £338m in 2017.<sup>69</sup>

- 4.30 Given the changes in the market and that co-productions and third-party funding is becoming increasingly common place in production financing, we propose to update the Guidance to make it clear how such funds should be dealt with. We set this out in more detail in Section 5.

### International productions

- 4.31 Some stakeholders queried how international productions fit within the regime and noted that the spend and talent criteria can be difficult to meet when elements of the production need to be filmed abroad. Some nations and regions-based producers felt that since they were operating with a substantive base outside of the M25, they should be able to count programmes which they film abroad, as regional productions, regardless of whether or not this means the spend and talent criteria are met within the UK outside the M25. Tinopolis suggested that we should exclude overseas spend from the production and talent budgets, to make the 70% and 50% minimum spend levels easier to hit in circumstances where it is necessary to film abroad, and thus make it possible to count such titles as regional productions.
- 4.32 The regional production obligations are about supporting and strengthening television production outside of London within the UK. This is made clear in the drafting of the Act and the BBC Charter and Agreement. As such, productions which have some international elements to them can count as regional productions, provided they still meet at least two of the three criteria in the UK outside of the M25. Otherwise, such titles are unable to qualify, regardless of whether a company has a substantive base in the nations or regions outside of the M25. We do not think that it would be in-line with the policy intent to exclude overseas production and talent costs when calculating whether the relevant budget thresholds have been met, as this could result in programmes which were mainly filmed abroad counting towards the regional production quota, despite only making a very small contribution towards the production sector in the UK outside of the M25.<sup>70</sup> For example, under the current criteria, a production company which spent 20% of its budget in Scotland and 80% abroad would not qualify; however, if overseas spend was excluded when calculating whether the 70% production budget had been met, it would qualify as 100% of the eligible budget had been spent in Scotland although only 20% of the total budget would have been spent in a nation or region.

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<sup>69</sup> [Ofcom Media Nations Report, 2018](#). We do not have comparable data for ITV or the ITV Breakfast licence.

<sup>70</sup> Separate from this review, we recognise that there is a need for Ofcom to provide greater clarity around the definition of an international production. We will discuss this issue separately with the broadcasters outside of this review.

## On-screen talent

- 4.33 Equity was among the small number of stakeholders who mentioned on-screen talent. It argued that the current criteria do not adequately support on-screen talent based in the nations and regions who are looking for work and suggested that the exclusion for on-screen talent could be deleted from the production budget criterion to address this issue. Equity also proposed that we could amend the criteria to 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.
- 4.34 The Guidance explains that the significant cost of on-screen talent on some productions could lead to the delivery of the quotas being skewed if it is included in the criteria.<sup>71</sup> We remain of this view and therefore do not propose to change this aspect of the Guidance. We are also mindful not to make any changes that would have the adverse effect of diluting the opportunities available to off-screen talent.
- 4.35 However, we recognise that on-screen talent is an important part of the production industry and we acknowledge that local casting initiatives may benefit local on-screen talent. We consider that broadcasters and production companies are best placed to decide what action is necessary to support the development of on-screen talent in the nations and regions and we would encourage them to take account of the views outlined here.

## The role of London in regional production

- 4.36 Allowing titles to qualify as regional productions by meeting two out of the three criteria, means that the current Guidance allows London to play a role in regional production. As a result, regional productions can be made both *from* the nations and regions, by producers making programmes locally, and *in* the nations and regions, by producers outside the locality, including those based in London. The 70% and 50% thresholds for the budget and off-screen talent criteria respectively also provide regional productions the flexibility to use some London based resources at a level that should not thwart the policy intent.
- 4.37 When we published the Guidance in 2004, we included a commitment to "*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*".<sup>72</sup> We have assessed this balance as part of the review.
- 4.38 Based on the data reported to us by the PSBs, titles produced by external production companies accounted for 57% of regional production hours in 2017. O&O data indicates that over a third of all nations and regions hours came from independent producers headquartered in London. However, the vast majority of these hours (79%) were attributed to an office outside the M25 and therefore satisfied the substantive base criterion. Just 8% of total regional production titles did not meet the substantive base

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<sup>71</sup> The Guidance, paragraph 9.2.

<sup>72</sup> The Guidance, paragraph 9.1.

criterion (i.e. were London producers without an office outside the M25) in 2017. This compares with 7% in 2016 and 4% in 2015. As outlined earlier in Section 3, these productions made up 12% of spend on and 9% of hours of PSB regional productions overall in 2017.

- 4.39 Companies choosing to set-up additional offices in the nations and regions can play a part in the development of production centres in those areas and should contribute to the local economy and production industry in a similar way as locally headquartered companies. We recognise the impact of this contribution will depend on how far the company in question engages with the local production ecology; for example, by hiring locally and investing in the office.
- 4.40 In responses to the CFE and in workshops, many stakeholders commented on the role that London continues to play in regional production. The city is seen to play a significant role both as a supplier of talent and facilities and as either the sole base or headquarters of companies gaining regional commissions.
- 4.41 Northern Ireland Screen commented on the flow of money away from Northern Ireland on some regional productions made by companies headquartered elsewhere. It advocated making clear that PSBs are obliged to spend 70% of the entire production budget in the nations and regions to meet this criterion, and not just 70% of the PSB's contribution to the budget.
- 4.42 Some stakeholders, particularly those based in the nations and regions, felt that London plays too large a role in regional production. STV, TAC and the Indie Club, among others, stated that there remains a reliance on talent, particularly for senior positions, from the capital, as well as a tendency to use London-based suppliers rather than local companies for elements such as kit hire and set design. Several stakeholders also stated that it is common for post-production on regional productions to take place in London. Noting that the majority of commissioners are based in London, some respondents clearly felt that these commissioners are overly reliant on known and trusted London based individuals and/or facilities and are unwilling, or lack the local knowledge to provide opportunities to their counterparts from outside the M25.
- 4.43 Moreover, it was also noted that in some instances the minimum spend thresholds for budget and talent criteria are only difficult to meet because commissioners put pressure on producers to use London-based talent. There was an overall sense from stakeholders based in the nations and regions that the continued control from London and use of London resources hinders the development of end-to-end production ecologies outside of London, limits career development for local talent and impacts on the ability of such production centres to be self-sustaining.
- 4.44 Linked to the perceived dominance of London, stakeholders based in the nations and regions stated there are limited career opportunities for freelancers available outside London. Stakeholders, such as the Indie Club, argued that there are fewer chances to break into TV outside London and those who work regionally have fewer opportunities to build varied CVs, due to the bias towards using tried and trusted London talent, particularly in

- senior roles. They suggest this can result in a talent drain from regional areas, as relocation to London is considered necessary for career progression. This may also have the effect of excluding those from less affluent backgrounds from progressing if they cannot afford to move to London. As a result, it was argued that limited opportunities outside the M25 may well result in a less geographically diverse range of talent making UK programmes and consequently may also negatively impact on the diversity of editorial voices on-screen.
- 4.45 Several calls have been made by respondents for action to be taken by broadcasters. Some of the suggestions for ways in which broadcasters could create opportunities in the nations and regions include insisting projects are shot and finished locally, and investing more in local talent, particularly at senior levels.
- 4.46 However, our engagement with stakeholders has made it clear that opinion is divided in this area. Stakeholders, including PSBs and some producers based in the nations and regions, believe that there remains a role for London in regional production. Questions still arise amongst regional producers on whether the skills base and post production options currently exist to replace London involvement without programme quality being diluted. The picture varies hugely by genre, role and geographic area.
- 4.47 For those stakeholders who do consider the scale of London's involvement in regional production a concern, various suggestions were put forward about how its influence could be reduced. Some stakeholders recommended we make the substantive base criterion compulsory either as one of two required criteria, or by requiring producers to meet all three criteria, to prevent companies with no presence outside of London from qualifying. Others suggested making changes to the criteria levels. These included: increasing the 50% off-screen talent level to combat any overreliance on London based talent; and making changes to the 70% spend level to encourage more of the production process, such as post production, to happen in the nations and regions.
- 4.48 Pact suggested that productions which do not meet the substantive base criterion should only be able to count 70% of the cost of the production towards the spend quota, rather than the entire cost. Meanwhile, the Scottish Government proposed that where the substantive base criterion is not met, productions should meet higher budget and talent criteria thresholds. There was also a suggestion from the Indie Club to replace the existing criteria with a system that focuses on the delivery of pre and post production in the nations and regions, to help achieve sustainable production centres that are independent of London.
- 4.49 We are of the view that London can play a very positive role in regional production, for instance by providing resources not available locally e.g. visual effects. Allowing London based companies to make regional productions (as well as allowing companies based in the nations and regions to make productions in other locations across the UK) should encourage healthy competition and deliver a greater diversity of output for viewers, as well as enable productions to be made in areas where there may be limited local talent and facilities available.

- 4.50 However, we do recognise why some stakeholders have concerns about London’s role. It is important that production centres in the nations and regions can draw upon London resources where necessary, but it is clearly desirable that they are also able to stand alone and work independently of London. We consider that there should be a greater focus on both how regional production centres can become fully functioning, end-to-end production ecologies and the role of both local talent and the PSBs as commissioners in achieving this.
- 4.51 We acknowledge that there are a range of industry initiatives taking place in the nations and regions now which seek to make progress in this area; however, we are of the view that there is scope for more action by the broadcasters to deliver faster, longer-term change and would encourage them to take this into account when planning their regional production strategies and any training initiatives. In order to help facilitate their planning and to benchmark progress to date, we intend to commission a survey in this area. We set out more detail on this in in Section 5.

## Allocating titles

- 4.52 The Guidance requires that each regional production is assigned to either Scotland, Wales or Northern Ireland, to one of three English macro-regions<sup>73</sup>, or as ‘multi-nation/region’ and that this data is submitted to Ofcom by the PSBs. As most productions meet all three criteria, titles are mainly allocated based on where a majority of the criteria are met.<sup>74</sup> This information is used to monitor the range of production centres PSBs are using for regional productions, and in the cases of the BBC and Channel 4, to also assess compliance with their nations’ production obligations. We asked for stakeholders’ views on the process for allocating productions in the CFE.
- 4.53 While this topic did not generate a great deal of response, those who did comment on it acknowledged that requiring titles to be allocated to just one single area of the UK is unlikely to truly reflect how the programme was made. There were a few suggestions for alternative approaches, although there was recognition that these could make the process more complex and overly burdensome.
- 4.54 A small number of respondents also commented on the process by which some productions are allocated as ‘multi-nation/region’ productions.<sup>75</sup> STV suggested that the ‘multi-nation/region’ category is not very transparent, and that these titles should be allocated according to where the majority of the spend criterion was met. The BBC commented on the fact that the ‘multi-nation/region’ category means that there are some titles which contribute to its overall regional production quota but cannot then be counted towards any of its specific nations quotas, in particular its English regions’ quota which came into effect in 2018. It suggested that for multi-English region productions, these

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<sup>73</sup> The macro-regions comprise the government regions Yorkshire and Humber, North-West and North-East England; West Midlands, East Midlands and East of England; South-West and South-East England.

<sup>74</sup> See paragraphs 7 and 8 of the current Guidance for more detail about the allocations process.

<sup>75</sup> This occurs when a London-based producer (without a substantive base in the nations and regions), makes a programme where the budget and off-screen criteria are not met in one single nation or macro-region.

should be allocated to a particular English macro-region on the basis of where the majority of the production spend occurred. In this way, the BBC would be able to count these titles towards the relevant quota.

- 4.55 By the same logic, it may also be the case that some of Channel 4's nations titles currently are not counted towards its out of England quota because the existing multi nation/region category does not discriminate between productions that have an England element and those that do not.
- 4.56 The way data has sometimes been reported to us indicates that the allocation process can be confusing and interpreted in different ways. For example, the 'multi-nation/region' allocation category is only supposed to be used in circumstances where a production has not met the substantive base criteria and has not met the budget or off-screen talent criteria in one single nation or macro-region. However, we have noted cases where titles are being allocated as 'multi-nation/region' which met the substantive base criterion and should therefore be allocated according to the location of the substantive base. The Guidance is also silent on how titles should be allocated in circumstances where all three of the criteria are fully met in different nations or macro-regions, or where two out of the three criteria were each met fully in different nations or macro-regions, and thus there is no majority which to base the allocation.
- 4.57 We consider greater clarity is necessary. We think there is a case for amending the process for allocating 'multi-nation/region' titles to ensure that broadcasters such as the BBC and Channel 4 are able to count all relevant titles towards their nations quotas. Our proposals are explained in Section 5.

## Compliance processes and enforcement

### Data gathering and reporting by the PSBs

- 4.58 In responses to the CFE and during workshop discussions, some stakeholders reported that there was sometimes confusion about where the responsibility lies for ensuring that productions counted towards the regional production quotas are made in line with the Guidance.
- 4.59 As explained in the CFE, the PSBs are responsible for ensuring that they are compliant with their licence conditions, and for providing accurate data to Ofcom to demonstrate their compliance. We recognise that in many cases the PSBs are reliant on the provision of information from third parties for ensuring that productions meet the definition of a regional production. However, in discussions with the PSBs it has become clear they have not generally requested supporting evidence on *how* the criteria which define a regional production have been met. They have instead relied on contractual agreements with producers as a proxy for evidence that productions are made in line with the criteria. This in turn appears to have resulted in many production companies not retaining information showing how the production has met the criteria.

- 4.60 If the PSBs do not know *how* the productions have met the criteria, it is difficult to see how they can know *if* programmes are definitely meeting the definition of a regional production and are therefore contributing towards the policy intent, prior to these being submitted to Ofcom to be counted towards the quotas. We note that Channel 4 has informed us that it commissions an external body to carry out audits on titles when it is unsure whether the criteria have been properly met. It is unclear whether other broadcasters undertake similar activity.
- 4.61 The limited oversight by the PSBs may have contributed to less consistent behaviour by production companies in fulfilling the criteria, and perhaps explains some of the examples cited earlier where the criteria have not been met correctly. We therefore consider that it is necessary for us to reiterate that the obligations for ensuring productions counted towards the quotas meet the definition of a regional production lie with the PSBs.
- 4.62 Our experience of analysing PSB-supplied data during the course of this review, along with the difficulty in obtaining additional information about particular titles featured on the Register (this has not always been readily available from either the PSB or their programme supplier), together with anecdotal evidence on how criteria are sometimes applied, has convinced us of the need for Ofcom to require a proportionate amount of additional data from the PSBs as part of their annual reporting. We set out more detail on this in Section 5.
- 4.63 We note that in recent days the PSBs have collectively published their own best practice advice, which they consider will support producers to deliver productions in line with Ofcom's Guidance. We understand they have produced this in response to queries from suppliers on the new data that we have requested they collect.

## Ofcom publications

- 4.64 Ofcom publishes a PSB compliance pack annually, detailing, amongst other things, whether the PSBs have reported meeting their regional production quotas. Since 2010, we have also published the Register which lists all the programmes PSBs have reported as contributing towards their regional production quotas.<sup>76</sup> The Register includes information on which of the three criteria the productions met, the programme supplier, and the geographic area it has been allocated to.
- 4.65 Feedback from stakeholders indicates the Register is broadly considered to be a useful tool for providing greater transparency on how the quotas are delivered. However, there is a general view that it could be improved by including more detailed information such as how key senior talent and executive roles are filled, the number of hours/episodes filmed in each nation and region, and more financial information. Tern TV suggested publishing the data closer to the time the programmes are broadcast, while the Ofcom Advisory Committee for Northern Ireland supported updating the figures more regularly. Pact recommended providing enhanced analysis of the data provided.

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<sup>76</sup> [Ofcom Made outside London programmes titles register, 2017.](#)

- 4.66 Notably, the BBC proposed that broadcasters should be required to collect more granular data from production companies to demonstrate compliance and report more information to Ofcom. It also considered that Ofcom's reporting should be more granular, provide clearer labelling of the criteria and allow people to interrogate the data more easily. Channel 4 added that it is keen to continue conversations with Ofcom and other PSBs about how information provided might be improved, to ensure an appropriate balance between providing transparency and ensuring confidence in the system, taking into account confidential and commercial data – without creating unreasonable demands. ITV argued that improvements in transparency should be based on information already provided and that the reporting requirements should not be increased.
- 4.67 We acknowledge that the current data we publish does not enable readers to ascertain in detail how a programme has qualified as a regional production. This is because the data requested from the PSBs until December 2017 only shows *if* productions have met a criterion, and not *how* this has been achieved. The approach to reporting to-date was designed to limit the administrative burden placed on the PSBs and the production companies working on regional production commissions. However, given the picture outlined above, we believe it is important for some changes to be made on how this and the new data we will be requesting, is reported publicly. We set out our full proposals in this area in detail in Section 5.

## Monitoring and complaints processes

- 4.68 A number of stakeholders, including Channel 4, Pact and the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee<sup>77</sup> commented on the fact that there is not a clear Ofcom process for submitting and tracking complaints about regional productions. Given the range of anecdotal evidence we received about the criteria not being fulfilled correctly from stakeholders in response to the CFE, the limited number of queries we have received about titles included on the Register historically, may, in part, be due to the fact that it has not been clear how to raise such concerns. Where we have received queries, these have been dealt with on a case by case basis. We acknowledge that the lack of a clear process in reporting on our assessment of such queries has caused frustration among some stakeholders and has contributed to some erosion of trust in the regime as a whole.
- 4.69 Some stakeholders have said they want to see a clear complaints process outlined in the Guidance. Some respondents, including the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee and the Scottish Government suggested Ofcom take a more pro-active approach to monitoring the PSBs' compliance by undertaking regular spot-checks and audits on the titles which are submitted.
- 4.70 We plan to make changes to how we monitor compliance and deal with complaints and queries from stakeholders. These are outlined in Section 5.

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<sup>77</sup> The Committee name changed from Culture, Tourism, Europe and External Relations Committee to Culture, Tourism, Europe and External Affairs Committee on 6 September 2018. As such, its response on our website is published under its previous name.

## Regional programming

- 4.71 In the CFE we outlined that the focus of this review would be weighted towards the regional production aspects of the Guidance, rather than the regional programming elements, as this is where the majority of sector changes and stakeholder observations were centred. We asked stakeholders for their views on regional programming to determine whether there was a case for exploring this area in more detail.
- 4.72 In general, we received little feedback on the topic and only a small number of stakeholders had views in this area. Directors UK felt that more could be done to ensure local production talent, particularly writers, directors and producers, are making regional programmes. It suggested that a fourth criterion could be added to the regional production criteria (which are also used to determine whether regional programmes were made in the relevant area) to indicate whether these roles are filled locally. We outline our views on the off-screen talent criterion in Section 5.
- 4.73 Our definition of a regional programme states that regional programmes should “*deal with subject matter of specific interest to the region and of less interest elsewhere*”.<sup>78</sup> STV questioned whether requiring the programmes to be “of less interest” is still appropriate, as it is difficult to prove, and in an age where people are considered as ‘global citizens’ there should be no topics that are of ‘less interest’ to some than others. While we agree that audiences do desire a much broader range of news and information in today’s market, and may be interested in knowing more about subjects of specific interest to a region outside of their own, we do believe that such topics would still be of ‘less’ interest to these viewers than those who actually live in that region. As such, we are of the view that this is still an important characteristic of a regional programme.
- 4.74 One individual respondent questioned whether Ofcom’s monitoring and enforcement processes are adequate given their view that ITV’s regional news focusses too much on national issues, rather than topics which are specific to their local area. While we do not monitor the specific content of each individual programme and the relevant broadcasters are responsible to having regard to the Guidance and definition of a regional programme, we do monitor audience perceptions in this area as part of our annual PSB research.<sup>79</sup>
- 4.75 Finally, some stakeholders stated that they believe that no changes are required to this element of the Guidance. ITV believes that the criteria are adequate and that changes would not be desirable. The BBC said it did not believe that this part of the Guidance requires further review at this stage, and the Ofcom Advisory Committee for Wales noted that they were not aware of any issues in this area which need addressing.

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<sup>78</sup> The Guidance, paragraph 14.1

<sup>79</sup> This is reported in Ofcom’s annual public service broadcasting tracking survey, which asks audiences about attitudes, satisfaction with provision and importance of characteristics associated with PSB provision in the UK. The latest data tables are published [here](#).

- 4.76 Taking the above into account, and the limited desire for substantive changes to this area of the Guidance, we have decided not to propose any specific amendments to the regional programming definitions.
- 4.77 However, it is important to note that since the regional production criteria are used to determine whether regional programmes were made in the relevant area, any changes we propose to the criteria will have an impact on regional programming. In addition, we believe that we need to make some small changes to the text in this section of the Guidance to reflect the new regulatory regime for the BBC. Both areas for change are explained in more detail in Section 5.

## 5. Review proposals

### Introduction

- 5.1 This section sets out our proposals for changes to the Guidance and the regime more broadly, and explains why we consider that these are appropriate. In formulating these proposals we have taken into account the views of stakeholders and our own analysis of the current system. We have, based on the evidence available to date, also considered the potential impact proposals will have on the relevant stakeholders.
- 5.2 Bearing in mind the feedback from the majority of stakeholders that we do not need to radically redesign the regional production system, our proposed changes focus on how we can bring greater rigour and accountability to the regime to ensure that it more effectively delivers the policy intent.
- 5.3 This section focuses solely on our proposals for consultation. We present more information and analysis regarding options for change which we considered but discounted, in Annex 6.
- 5.4 Our proposed changes fall into two areas, firstly, the Guidance itself and secondly the regulatory regime associated with it.

### Proposed changes to the Guidance

- 5.5 The examples cited in Section 4 where the criteria have been applied incorrectly or applied in a way which is technically correct but does not meet the policy intent, indicates that the Guidance is not always working as it should. We therefore consider it is necessary to make some changes to the Guidance to increase its effectiveness. These changes all focus on ensuring the Guidance better delivers the original policy objective, as opposed to introducing new objectives. We also need to clarify some of the issues and questions stakeholders raised about the Guidance, alongside making some small changes to bring it in line with Ofcom's new regulatory arrangements for the BBC.
- 5.6 The intention is that these changes should make it clearer to the PSBs and producers how to correctly meet each of the criteria to deliver a production that qualifies towards the regional production quotas.
- 5.7 Annex 7 is a draft version of the Guidance which shows how changes to the document would be reflected if the draft proposals are implemented.

### Reminder of the intention of the policy

- 5.8 Firstly, we propose to make it clear what the policy objective of the regional production obligations is at the start of the Guidance document. The aim of the regional production obligations is to support and strengthen the production sector outside of London; however, this explanation is not prominently positioned in the current Guidance.

- 5.9 Clarifying at the start of the document that the policy objective is the lens through which the Guidance should be applied should help to guide the PSBs and production companies in interpreting the criteria in instances where they may be struggling to decide whether or not their intended approach to meeting the criteria is appropriate.
- 5.10 As this proposed change aims to make the objective of the regional production obligations more explicit and aid stakeholders' application of the Guidance, we do not consider that this will have any adverse or detrimental impact on the PSBs or production companies.

Q1) Do you agree with our proposed change to articulate the intention of the regional production obligations at the start of the Guidance? (See wording at Annex 7)

## Changes to the criteria

- 5.11 The changes we propose to make in relation to the criteria are intended to provide greater clarity about how they should be interpreted and what our expectations are for each. We consider these necessary and justified to secure the overarching policy objective in a more consistent manner, regardless of whether this reduces the flexibility of the criteria.
- 5.12 To balance the need to improve clarity, encourage good practice and avoid negatively impacting on flexibility, we also propose introducing an annex to the Guidance containing explanatory notes to support each of the criteria. These notes will set out in more detail the aims of each of the criteria and provide the PSBs and stakeholders with examples to aid interpretation when applying them. The notes should address areas of confusion and concern, while ensuring that the criteria retain the flexibility to be interpreted as befits the individual circumstances of each production. Overall, we have tried to offer clarity where we think it is necessary, while ensuring that the criteria can continue to be applied effectively in different circumstances. We also note that in recent days the PSBs have collectively published their own best practice advice, which they consider will support producers to deliver productions in line with Ofcom's Guidance.

## Substantive base

### Current criterion wording

*"The production company must have a substantive business and production base 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."*

- 5.13 Of all the criterion, substantive base drew by far the most calls for amendments, for a range of reasons. Some stakeholders suggested that more detailed definitions of some of the terms, such as "usual place of employment" and "senior personnel" could help more clearly define a substantive base and help to either prevent the criterion being applied incorrectly or to alter the objective of the criterion e.g. to prevent London production

- companies from either meeting this criterion or from meeting the definition of a regional production entirely.
- 5.14 Responses to our CFE also suggest that the substantive base definition is being undermined by “brass plate” and “pop-up offices” claiming to be substantive bases and qualifying towards the quota using this criterion, without delivering the ongoing positive contribution to the local production centre or broader creative economy, that would flow from a genuine substantive base. We have also separately identified some titles which suggest this is the case.
- 5.15 Some stakeholders also requested further clarification around various aspects of the substantive base criterion. Questions have been raised about what constitutes a substantive base (for instance, whether it needs to be a distinct legal entity, or how special purpose vehicles (“SPVs”)<sup>80</sup> should be treated), as well as how the three elements of the criterion should be met (for example, whether it is necessary for three separate people to fulfil each aspect of the criterion).
- 5.16 In proposing changes to the criterion, we have weighed up the issues identified above. We recognise that over a third of nations and regions hours come from independent producers headquartered in London, however, the proportion of hours and spend accounted for by companies with no presence outside the M25 is small. Indeed, 79% of hours made by external companies with an HQ in London were attributed to an office outside the M25. We acknowledge that this in turn can generate a further set of concerns.
- 5.17 We remain of the view the PSBs should be able to draw on the full range of UK producers when commissioning regional productions. We do not consider it to be either appropriate or proportionate to amend the substantive base criterion to exclude London producers or London headquartered companies. However, it remains crucial that producers counting an office outside the M25 toward the substantive base criterion fully deliver all the elements of the criterion. We would observe that in some cases it appears to be considerably easier for companies headquartered in the nations and regions to convincingly show they have met the substantive base criterion than companies for whom the office is a secondary base. This should not be the case.
- 5.18 We are therefore proposing three changes to the criterion, one of which is considerable and designed to eliminate the use of pop up offices, along with two clarificatory amendments to help ensure that a substantive base is genuinely that. Firstly, we propose to stipulate that:
- a) a substantive base should be operational prior to the point of commission.
- 5.19 Given that the criterion already requires that a substantive base should be seeking commissions to qualify as such, our position is that the current wording already implies the

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<sup>80</sup> An SPV is a company set up for a specific project, e.g. to produce a film/programme. Commonly used for big productions, particularly drama. The ‘vehicle’ keeps the production separate from the production company’s other activities which can mitigate legal risks.

office should be operational prior to the commission in question being obtained. This change is therefore a clearer statement of this position.

- 5.20 However we are mindful that this proposed change has the potential to change the balance of the of companies commissioned to make regional productions as this may have a chilling effect on incentivising established companies from seeking to set up new permanent or temporary offices in the nations and regions. We would accept that in the case of start-up and fledgling companies, the early substantive base from which the initial commission was pitched may be as modest as a home office or kitchen table, but that this would not be the case where established companies are looking to expand into the nations and regions. We recognise that this in turn may result in a regime that propagates fewer new substantive bases, but consolidates existing businesses, if the effect is that established substantive bases obtain more commissions in nations and regions' production. Alternatively, this change could increase the number of producers delivering regional commissions by meeting the other production budget and off-screen talent criteria instead (12% of spend and 8% of hours were delivered in this way in 2017).
- 5.21 The proposed change would limit the role broadcasters could have in influencing the opening of new offices of established companies in the nations and regions, at the point of commissioning programmes. It could also have an impact on the PSBs' ability to commission particular production companies in certain areas if they do not have an existing substantive base there and if the company is unable to meet both of the other criteria in the locality. This in turn may change how the broadcasters decide to meet their quotas in some instances.
- 5.22 Introducing this requirement should not prevent production companies or SPVs that use new or temporary offices from being able to qualify towards the regional production quotas, but they would need to meet the other two criteria for the initial commission. If a company chooses to make the temporary office permanent, it would count towards the substantive base criterion for its next commission, provided it met the other aspects of the definition.
- 5.23 Explicitly requiring a substantive base to be operational prior to the point of commission should help prevent pop ups, thus ensuring that producers who would have otherwise used this practice, will have to meet the other two criteria in full on future commissions. It should also improve confidence in the definition of the criterion and encourage broadcasters to take a longer term strategic view of their approach to commissioning in the nations and regions. However, it is difficult for us to ascertain the level of any potential negative impact as it is impossible to know how many regional productions in the future may have met this criterion by setting up an office at the point of commission, or the scale or value of these commissions, we therefore particularly welcome stakeholders' comments on this point in response to the consultation.
- 5.24 To ensure it is transparent when a substantive base became operational we propose to require the PSBs to submit an additional reporting data point (where the substantive base criterion is met) detailing the year the substantive base was established.

- 5.25 We also propose to alter the wording of the criterion to make it clear that:
- a) the production in question must be made from the substantive base; and
  - b) all elements of the criterion must be met;
- 5.26 We consider that adding this additional clarity should aid stakeholders' understanding of how to meet the criterion, ensure application of the criterion is more accurate and consistent and help ensure the criterion is delivered in the way that was always intended. Any detrimental impacts experienced by stakeholders in relations to the proposals in 5.25 are likely to be a result of previously flawed application of the Guidance.
- 5.27 Ultimately these proposed changes should help ensure that the substantive base criterion consistently delivers production that is genuinely made from the nations and regions and which makes an ongoing positive contribution to the local production ecology and creative economy.
- 5.28 We also propose to provide some explanatory notes to address some specific questions raised by stakeholders. The proposed notes can be found in Annex 7 and cover the following:
- a) How many individuals need to be employed: we do not propose to specify a number of employees to meet the substantive base criterion because we consider this is likely to vary according to specific circumstances, such as the size of the production company and the types of productions being made.
  - b) Whether the substantive base needs to be its own legal company: we do not propose to require this, as we consider that the corporate structure adopted by the production company is largely irrelevant to the application of the substantive base criterion
  - c) Which jobs can be counted as executives and senior personnel: we do not propose to list specific job titles that would count as executives or senior personnel, as we consider that this is likely to vary by employer, by genre and over time. However, we have proposed some guidance as to the types of role that would be likely to count as executives or senior personnel, based on the particular job responsibilities.
  - d) Whether SPVs can be counted as a substantive base: we consider that the key issue for a production made from an SPV is whether the SPV meets all of the elements of the substantive base criterion.
  - e) What operational prior to the point of commission means: we set out that it is likely the company will have made programmes from that base previously, although recognise that this may not always be the case for start-up companies. We do not propose to set a minimum period of establishment.
- 5.29 Beyond these proposals, we are not planning to make any further changes or provide any additional clarifications to address some of the more specific queries stakeholders have raised with us about the substantive base criterion, as we consider this could restrict the flexibility of the criterion and could lead to the Guidance quickly becoming outdated.

However, we would welcome views from stakeholders, supported by evidence where appropriate, on whether they believe additional clarification points are necessary.

Q2) Do you agree with our proposed changes to the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

Q3) Do you agree with the suggested explanatory notes for the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

## Production budget

### Current criterion wording

*“At least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money and copyright costs) must be spent in the UK outside the M25.”*

- 5.30 The current wording of this criterion sets out costs which are excluded from the production budget for the purposes of the 70% minimum spend threshold. However, from our discussions with stakeholders, we accept that there are other costs involved in a production that are handled in different ways by different producers, and some have sought clarification. These include items such as travel, overheads, and production fees. On productions where there is third-party funding, there is also some confusion as to whether this criterion should be applied to the entire production budget or just the proportion provided by the PSB.
- 5.31 We propose to make two specific changes to this criterion in response to stakeholders’ requests, to make it clearer what should and should not be included as part of the production budget. This includes amending the wording of the criterion to make it clear that:
- a) the 70% should be counted against the entire production budget, including any funding from third parties; and
  - b) any production fee should be excluded from the production budget when calculating whether the 70% threshold has been met.
- 5.32 With regards to change a), we expect broadcasters and production companies to apply the criterion to the entire production budget (subject only to the specified exclusions). We do not consider it practical to separate out the PSB’s contribution in working out how that money has been spent, and we also wish to guard against creative accounting. Further, if there were an artificial divide of the production budget according to the PSB and third party’s contributions and the criterion was only applied to the PSB’s hypothetical spend, then this could result in a comparatively smaller amount of spend outside the M25, and consequently a more limited positive impact on the local production ecology.

- 5.33 We consider that using the total budget for the purpose of meeting the criterion will be beneficial both to the creative economies and viewers.<sup>81</sup> From our discussions with stakeholders, it seems to be the case that most are already doing this, and so we do not expect this proposal to generate major change or have a large impact, but it will be helpful to make this explicit to ensure consistency in the future, especially when funding for content from multiple sources is only likely to increase.
- 5.34 With regards to change b) it is our view that a production fee is the profit element of a production and that this income should be treated differently to programme production expenditure. From what we have heard anecdotally we recognise that producers use the production fee in different ways. Therefore, we consider change b) necessary, to achieve greater consistency in the application of this criterion and make it explicitly clear that the production budget should be focused on money going out of the production company to make the programme, rather than money coming in. If there are circumstances where the production goes over budget and the production company chooses to use some of its production fee to cover these costs, it would then be acceptable for such spend to be designated as an additional part of the production budget and subject to the 70% calculation.
- 5.35 It is difficult for us to ascertain the impact this proposal may have since we do not know how most stakeholders treat the production fee when calculating whether 70% of the production budget has been spent outside of the M25. We are aware there is a risk that in seeking to achieve greater consistency there may be unintended consequences attached to the proposal that we have not yet been able to identify. Therefore, whilst we are minded to make the amendment, we would welcome evidence from stakeholders on the potential impact of this proposal.
- 5.36 In general, we do not propose to provide explicit guidance on whether particular costs should or should not be included as part of the production budget for the purposes of calculating the 70% threshold, or whether each cost would count as regional spend. This can be highly dependent on a range of factors specific to individual productions and granular regulation in this area may well be counterproductive. However, we have added some explanatory notes on this to address specific stakeholder queries on how costs associated with travel should be allocated, how overhead costs should be allocated, and spend abroad (see Annex 7).
- 5.37 In relation to travel costs, we recognise that a significant portion of the budget can be spent on transporting talent/equipment, and that this forms an essential part of the production process. Therefore, spend on travel should be included when calculating whether the production budget criterion has been met. We propose that costs spent on transporting talent/equipment between London and the regions (or outside the UK) would not be appropriately classified as regional costs, as it is unlikely that these costs would

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<sup>81</sup> We acknowledge that although only spend by the relevant broadcaster will count towards its quota, the total hours will count. We consider that viewers will benefit from the additional (third party) money spent on higher quality productions. Therefore, while we do not consider it appropriate for third party spend to be counted towards the PSBs' spend obligations, we acknowledge the benefit to viewers in counting all of the hours against PSB's quotas.

contribute to the creative economy in the region. However, we propose that costs spent on local travel would be appropriately classified as regional costs, as we consider that these costs typically would contribute to the local creative economy.

- 5.38 In relation to overhead costs, we propose that overhead costs associated with keeping a substantive base in the nations and regions operational should be classified as regional spend. Where a production is made by a London-based company with no substantive base, the overhead costs should be classified as London-based expenditure. Where there is a substantive base but a production company has multiple offices across the UK, we would typically expect overhead costs to be pro-rated by location. In each case, we consider that these proposals reflect the underlying principle of ensuring that the production company is making a significant financial contribution to the creative economy in the UK's nations and regions.
- 5.39 In relation to spend abroad, we propose that spend outside the UK should be allocated as part of the production budget but not classified as regional spend, given that it does not contribute to the creative economy in a region. However, we note that it would be appropriate to count costs associated with paying talent based in the nations and regions of the UK while working abroad on the production in question.
- 5.40 Beyond these proposals, we are not planning to make any further changes or provide any additional clarifications to address some of the more specific queries stakeholders have raised with us about the production budget criterion, as we consider this could restrict the flexibility of the criterion and could lead to the Guidance quickly becoming out of date. However, we would welcome views from stakeholders, supported by evidence where appropriate, on whether they believe additional clarification points are necessary.

Q4) Do you agree with our proposed changes to the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

Q5) Do you agree with the suggested explanatory notes for the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

### Off-screen talent

#### Current criterion wording

*“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. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25.”*

- 5.41 The off-screen talent criterion generated fewer substantial comments from stakeholders than the other criteria, although some elements were queried. These included questions around the definitions of “production talent” and “usual place of employment”, and whether staff hired through a studio should be counted as having the studio as their usual

place of employment or be treated individually as freelancers for the purposes of meeting the 50% threshold.

- 5.42 Our analysis in Section 4 also highlighted that the current criterion can allow productions to qualify as made outside London by hiring freelance talent who live in the nations and regions to travel to London to work on productions. Overall, there was a general sense from stakeholders that more needs to be done to better support the development of talent in the nations and regions.
- 5.43 We have considered a range of options in assessing the best way to address these issues and queries, including making substantial changes to the criterion. However, we do not propose to do this, as we consider that this could have the negative impact of restricting the range of opportunities available to talent based in the nations and regions. Instead, we have provided some additional information in the proposed explanatory notes, which seeks to address the specific questions raised by stakeholders, including whether production talent means everyone on the payroll; whether talent hired through a studio based outside the M25 should count; and whether the production company should verify where freelance talent lives (see Annex 7).
- 5.44 In relation to the definition of production talent, our explanatory notes clarify that we would expect production companies to only assign as regional spend the costs of talent generally recognised as part of the creative programme making process, but recognise that this will, in some instances, require an element of judgment. We consider that this is likely to be consistent with the intention of the policy to provide genuine creative job opportunities outside of London.
- 5.45 In relation to talent hired through a studio or service company outside London, we have noted that the criterion specifies that freelance talent must live outside the M25.
- 5.46 Beyond these proposals, we are not planning to make any further changes or provide any additional clarifications to address some of the more specific queries stakeholders have raised with us about the off-screen talent criterion, as we consider this could restrict the flexibility of the criterion and could lead to the Guidance quickly becoming out of date. However, we would welcome views from stakeholders, supported by evidence where appropriate, on whether they believe additional clarification points are necessary.

Q6) Do you agree that the off-screen talent criterion should remain the same? If not, please explain why, providing appropriate supporting evidence where possible.

Q7) Do you agree with the suggested explanatory notes for the off-screen talent criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

## **Changes to exclude self-promotional content from the regional production quotas**

- 5.47 We consider that the inclusion of self-promotional content in fulfilment of the regional production quotas runs counter to the intent of the intervention and propose to exclude

such content from the quota calculations in future. This would mean ITV would no longer be able to count *Nightscreen* towards its regional production quota in the way that it has for some time.

- 5.48 Since 2010 ITV has generally over-delivered against its regional production quota, and so the exclusion of self-promotional content would not have made any difference to its compliance with its quotas. However, in 2017 *Nightscreen* accounted for 35% of ITV's overall regional production hours, and its exclusion from the regional production list would have led to ITV underdelivering on its hours quota for regional production by 2.3 percentage points (67 hours). We cannot exclude the possibility that ITV may become increasingly reliant on *Nightscreen* to meet its hours quota. Given the focus of this review is on ensuring that titles which qualify as regional productions are contributing to the policy intent, we believe that it is now appropriate to exclude *Nightscreen* and any other self-promotional titles from counting towards the regional production quotas in the future.
- 5.49 Annex 7 shows how we propose to reflect this change in the Guidance. While this change may have an impact on ITV's ability to meet its regional production quotas (in particular its hours quota) in the immediate term, the increase in new hours it would need to commission from the nations and regions based on 2017 data is relatively small. The multimedia company which makes *Nightscreen* may also be impacted if ITV decides to reduce the number of hours of *Nightscreen* that it commissions or stops commissioning the title altogether. We are not aware of any other self-promotional content currently on the other PSB channels which are counted as qualifying titles, and so this change should not have a direct impact on them. It would, however, limit their ability to count such content towards the regional production quota in the future if they wanted to adopt a similar approach. Nevertheless, we believe that such a change is necessary to ensure that all productions counted towards the quota genuinely contribute to the policy intent.

Q8) Do you agree with our proposed change to exclude self-promotional content from the calculations? If not, please explain why, providing appropriate supporting evidence where possible.

## Changes to the allocation categories

- 5.50 Based on our assessment of the current allocations process, we believe that it is necessary to make some amendments to provide further clarity on how titles should be allocated when the criteria have been met across multiple locations.
- 5.51 Firstly, we believe it is important to clarify when the 'multi-nation/region' category should be used. The Guidance states that:
- "In the event that a programme from a producer based within the M25 qualifies as a regional production in relation to criteria b) and c) above, but does not fully meet those criteria in any one nation or macro-region, the programme should be allocated as a 'multi-nation/region' production. Where a qualifying production comes from a producer with a substantive base outside the M25, but does not fully meet criteria b) and/or c) in any*

*one nation or macro-region, the production should be allocated according to the substantive base.”*

- 5.52 This means that the multi-nation/region category should only be used in cases where a production has not met the substantive base criterion. As explained in Section 4, in some cases, productions which have met the substantive base criterion have still been allocated as multi-nation/region productions, which demonstrates that this aspect of the Guidance is not always implemented correctly. Titles should be allocated to a specific nation or macro-region wherever possible. ‘Multi-nation/region’ should only be used when this is not possible.
- 5.53 While the above applies when criteria b) and/or c) have not been *fully* met in one nation or macro-region, the Guidance is currently silent on how titles should be allocated in instances where all three of the criteria have been *fully* met in different nations or macro-regions and where only two criteria have been met and both have been met *fully* in different nations and/or macro-regions, for example: a production that meets the substantive base criterion in Scotland, the production spend criterion in Northern England, and the off-screen talent criterion in Midlands and East; or a production that meets the spend criterion in Southern England and the off-screen talent criterion in Wales (but has not met the substantive base criterion).
- 5.54 In these circumstances, the majority approach<sup>82</sup> does not apply. We consider that such titles are also examples of ‘multi-nation/region’ productions. As such, the same principles as above should be followed. The title should be allocated according to the location of the substantive base if that criterion is met, or as a ‘multi-nation/region’ if it is not. We propose to update the wording in the Guidance to make this clear (see Annex 7).
- 5.55 So that the Guidance reflects more recent obligations placed on the BBC<sup>83</sup> and Channel 4<sup>84</sup>, we are also proposing to introduce two new allocation categories to sit alongside ‘multi-nation/region’:
- a) **Multi-English region:** for titles that have not met the substantive base criterion and have either i) met each of the budget and off-screen talent criteria fully, in two different English macro-regions; or ii) met both the budget and off-screen talent criteria in a combination of English macro-regions, but not fully met the relevant 70% and 50% thresholds in any single English macro-region.
  - b) **Multi-nation outside England:** for titles that have not met the substantive base criterion and have either i) met each of the budget and off-screen talent criteria fully, in two different nations outside of England; or ii) met both the budget and off-screen talent criteria in a combination of different nations outside of England, but not fully met the relevant 70% and 50% thresholds in any single nation outside of England.

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<sup>82</sup> See para 4.52 for more information.

<sup>83</sup> In 2017 Ofcom introduced hours and spend quotas for the England (outside the M25 area); [BBC Operating Licence](#), paragraph 2.54.

<sup>84</sup> We originally set the out of England production quota at 3% by volume and spend. We increased the level to 9% in the [Renewal of the Channel 4 licence, 2014](#) which will take effect from 2020.

- c) **Multi-nation/region:** it is necessary to retain this category for titles that have not met the substantive base criterion and have either i) met each of the budget and off-screen talent criteria fully but where one has been met in an English macro-region and one has been met in either Scotland, Wales or Northern Ireland; or ii) met both the budget and off-screen talent criteria across a combination of England and another UK nation or nations, but do not fully meet the relevant 70% and 50% thresholds in any single nation/macro-region.
- 5.56 We have also added some worked examples to the Guidance detailing how the different allocation categories should be used (see Annex 7).
- 5.57 Introducing the new multi-English region category would allow the BBC to rightly count some of its titles towards its new English regions production quota. The new multi-nation outside England category may also benefit Channel 4 on occasions where it has titles which can count towards its overall outside England production quota, that to date may have necessarily been counted as multi-nation/region productions.
- 5.58 These new categories would make reporting in this area more transparent and more accurately reflect where the programme is made. Such changes could make the allocation process slightly more complex for the PSBs by requiring them to consider some additional categories; however, this would be small in scale as it would only affect titles which are currently allocated as 'multi-nation/region' (0.9% of hours in 2017) and that any additional reporting burden is outweighed by the benefits the proposed change would deliver.

Q9) Do you agree with our proposed changes to the allocation categories (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

## Changes to update the Guidance

### Changes to reflect the new regulatory regime for the BBC

- 5.59 Under the current Royal Charter and Agreement, Ofcom took on responsibility for regulation of the BBC on 1 April 2017. We therefore need to make some changes to the Guidance to reflect this.
- 5.60 With the exception of the introduction of new allocation categories outlined above, for the most part, these changes will be limited to small changes to the text within the Guidance. These include updating references to what is required by the BBC Agreement and what Ofcom's role is in setting such obligations. Annex 7 shows how the changes will be reflected in the Guidance.
- 5.61 Given these changes are only to reflect the new regulatory regime for the BBC, we do not need to consult on these.

### Other changes

- 5.62 The Guidance currently outlines and explains some of the reasoning behind our approach to regulation in this area, such as why we require a minimum of two out of the three

criteria to be met, and why on-screen talent is excluded from the production budget calculations.

- 5.63 In order to improve the clarity of the Guidance document we have decided to remove all peripheral information which does not directly assist the user in meeting the regional production obligations and are therefore removing any references to policy rationale from future versions of the Guidance (Annex 7 shows what has been removed). The rationale previously contained within the Guidance is set out in paras 2.17-2.18 above, and the rationale for our proposed changes is contained within this chapter.

## Changes to compliance processes and enforcement

- 5.64 We consider that to date, limited oversight of, and accountability for, ensuring that productions have met the definition of regional production appropriately may have contributed to instances of poor practice in applying the Guidance. In turn, these cases may have limited the extent to which the regional production regime has delivered the policy intent. Some stakeholders' confidence in the system has also been affected. To address these issues we consider a change in the approach to compliance is required. This will necessarily involve all players party to the production and regulatory compliance process.
- 5.65 We are therefore also proposing a number of changes to Ofcom's processes for ensuring the PSBs' delivery of their regional quotas is consistent with the policy intent and also plan to enhance our annual publications in this area.

### Data gathering

- 5.66 We recognise that in many cases the PSBs are reliant on the provision of information from third parties for ensuring that productions are made in line with the Guidance. However, the licence obligation to fulfil the quotas and have regard to the Guidance in doing so, remains the PSBs' alone. Previous experience of asking for additional information about titles has demonstrated that record keeping by PSBs to date has not always been adequate.
- 5.67 PSBs need to be satisfied that when allocating productions against their quotas, the titles in question have met the relevant criteria to be counted as a regional production. We do not consider it to be sufficient to merely rely on a warranty or declaration from the supplier and we strongly encourage the PSBs to consider what information they feel should be available to them to evidence compliance.
- 5.68 For the most part, we consider it is for the PSBs to determine through discussions with their suppliers, the fine detail of how they wish to achieve this, and we note their very recent collective publication providing advice to producers on how to interpret Ofcom's current Guidance. However, as outlined in Section 4, many stakeholders believe that there is more Ofcom could do to enhance reporting activity and our analysis supports this view. We therefore consider it essential that the PSBs also report additional annual data to Ofcom to aid our oversight of the compliance process and enable us to understand better

how the broadcasters are ensuring titles they count towards their quotas are meeting that definition of a regional productions though the correct application of the Guidance criteria.

### PSB Reporting to Ofcom

- 5.69 We have already informed the PSBs that they must start collecting more information from their suppliers on how regional productions have met the criteria. The new data includes the postal address of the substantive base, where the talent and spend criteria are met, and the percentage of the relevant budgets met there. Some of this data will be collected and reported to Ofcom for regional production titles broadcast from July 2018 onwards. The entire data set requested to date will be collected and reported to Ofcom for all regional production titles broadcast from January 2019 onwards.
- 5.70 In addition, as described in 5.24 above, for productions meeting the substantive base definition, we also propose to require the PSBs to supply an additional data point detailing the year the base was established as part of their annual reporting to Ofcom.
- 5.71 The way in which we intend to manage and publish this data is outlined in the publications section below.
- 5.72 We recognise that such changes are likely to have resource implications for broadcasters and production companies. We consider that the volume of additional annual data we will request strikes the necessary balance between providing us with improved insight into the broadcasters' delivery of the quotas and limiting the additional cost burden upon them. In combination with the other measures outlined below we are of the view this request is both proportionate and appropriate. Furthermore, a more rigorous PSB reporting regime which increases transparency, should encourage the broadcasters to be more curious about their regional productions. This additional scrutiny should help drive more consistent application of the criteria leading to improved delivery of the policy intent.

### Publications

- 5.73 We have noted the appetite amongst some stakeholders to see more data on regional productions published by Ofcom to increase transparency around how the quotas are met. We consider that the review presents an ideal opportunity to overhaul our approach to data publication in this area and to enhance what we publish within the Register.
- 5.74 To date, quota data and the Register have been published separately. In future, we plan to increase the range and volume of data we publish, and to provide all relevant data in a single interactive digital publication that users can interrogate with a range of filters. To enable stakeholders to get a better sense of what this will look like, we have published an enhanced version of the 2017 Register, based on the data we currently collect (see Annex 8). Future iterations of this interactive Register may also contain some of the additional data we will be collecting from the PSBs for titles broadcast from July 2018 and January 2019 onwards, which will make it more comprehensive.
- 5.75 This should enable a wide range of stakeholders to access the data most relevant for exploring their specific areas of interest. The increased transparency created by this

publication should allow stakeholders to understand better how productions meet the criteria and fulfil the quotas. This in turn should also help increase trust and confidence in the system.

### Monitoring

- 5.76 We also plan to introduce proactive monitoring, to check how the revised Guidance and explanatory notes are being interpreted. This will be achieved through reasonable, ad-hoc spot checks on titles submitted as regional productions, where we will request additional information about productions to ascertain their regional production credentials. This work would be carried out under our general information gathering powers under the individual PSB licences.
- 5.77 Our view is that such monitoring should also have a significant positive impact by encouraging all those in the regional production chain to be more accountable for delivering a production in line with the intent of the Guidance. It should help ensure that the PSBs take greater responsibility for productions made by them or in their name and encourage producers to be more rigorous in their application of the Guidance. It should also encourage better record keeping and make any investigations resulting from monitoring or complaints easier to carry out than has been the case to date. Again, we recognise that this process will have resource implications for the broadcasters, producers and Ofcom. However, we believe that proactive ad hoc monitoring is an appropriate and proportionate measure to tackle the root cause of many of the issues identified in Section 4 around how the criteria are applied in practice.

### Complaints process

- 5.78 We accept stakeholders' concerns about the lack of a transparent complaints process for flagging productions allocated to the regional production quotas, that stakeholders believe have not been delivered in line with the Guidance. In response we intend to make the complaints process clear within the Guidance by adding an explanation of the existing complaints process for breaches of licence conditions, including how we will report on outcomes, and by providing stakeholders with a clear route for raising compliance concerns with us about regional production titles. This should help restore confidence that compliance issues raised are assessed appropriately.
- 5.79 Enforcement action can be taken if:
- a) the licensee subsequently fails to meet its spend or hours licence quota, as a result of the relevant title no longer being counted towards them, or
  - b) the licensee has provided Ofcom with inaccurate information as part of its response to a formal information request.

In such cases we could consider sanctioning the licensee. Sanctions can range from an In-Breach Decision in the Ofcom Broadcast Bulletin through to the imposition of a financial penalty. The maximum financial penalty we can impose on the BBC is £250,000. For other PSBs, it is up to 5% of 'qualifying revenue'.

5.80 We are of the view that this package of proposals to improve compliance through: the provision of clearer Guidance, increased reporting; enhanced, more comprehensive data publications; proactive monitoring; and a clear complaints process should collectively deliver a more effective regime by incentivising PSBs to take more responsibility for compliance or face possible sanctions and enforcement action.

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.

## Monitoring the PSBs

5.81 As explained previously, the Communications White Paper in 2000<sup>85</sup> considered the creation of strong production centres to be one of the aims of the regional production obligations. Our analysis in Section 3 highlights that, broadly speaking, the production sector outside of London is performing well, increasing its share of PSB expenditure over the past decade and growing the number of active local production companies making programmes for the PSBs in the nations. However, some stakeholders' CFE responses called for the PSBs to do more to develop the careers of talent based in the nations and regions and reduce their use of London-based talent and facilities when making regional productions in order to enable production centres outside London to become more sustainable. They have called on Ofcom to introduce additional regulation to address this. The issues presented in our earlier analysis in this area also suggest that more progress can be made.

5.82 We are of the view that more that can be done to support the development of independent, end-to-end production ecologies in the nations and regions. We consider that all our proposed changes to the Guidance and the regulatory regime outlined above, should further support and enhance the delivery of this aspect of the objective. It should also be boosted by the range of industry initiatives unfolding in the nations and regions, including the major developments of a new Channel 4 HQ in Leeds and two creative hubs in Glasgow and Bristol, and the BBC's new Scotland channel, as well as the new Creative Skillset regional talent pipeline scheme (beginning in Leeds), financial investment in Scotland by its Government, and a new major post-production facility which has opened in Manchester.

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<sup>85</sup> A New Future for Communications 2000, paragraphs 4.46 and 5.7.1-5.7.2.

- 5.83 With the above developments in mind, we consider it would be premature at this time to include further regulatory measures, beyond those which we have proposed. However, these developments do present a timely opportunity for the PSBs to review their regional production strategies to consider how they can best capitalise on these new opportunities to reduce their reliance on London talent and facilities and make greater use of regional resources to better support regional production centres. This in turn should also help deliver a broader range of editorial voices which should better reflect and serve UK audiences.
- 5.84 To obtain a more detailed understanding of the mix of London and nations and regions talent and resources employed in the making and commissioning of regional productions, and to benchmark progress to date, we intend to commission a survey of both producers of regional productions and the PSBs. This data will provide a factual evidence base on the resourcing split between London and the nations and regions, against which it will be possible to assess developments over time. It should also serve as a useful resource for the PSBs to draw upon in designing their future regional production strategies and training initiatives.
- 5.85 We will keep under review how each of the PSBs are contributing to the further development of regional production centres, using the survey, and the additional data we will start collecting from the PSBs (as outlined above).
- 5.86 If, after the market developments noted above have taken effect and had time to bed in, we are of the view that not enough progress is being made in this area, we may reconsider whether further regulation is necessary to achieve the aims we seek. This could include substantially altering the current criteria or adding additional criteria in this area.

## Proposals in summary

Figure 9: Proposed changes to the regulatory approach to regional production and regional programming

Licence requirements	Guidance	Compliance	Enforcement	Benchmarking
Regional production quotas on minimum % hours and spend	Regional productions must meet at least two out of the three criteria	<b>Reporting</b> – PSBs submit data to Ofcom annually reporting on whether they met their quotas and the productions they have counted towards their quota	Complaints dealt with on a case by case basis. If a licence obligation is breached, we will take appropriate enforcement action	Undertake industry survey of regional production to benchmark the relative use of nations and regions vs. London resource
Requirement for regional productions (taken together) to provide a suitable range of programmes and use a suitable range of production centres	Regional productions must be allocated to a nation, one of three English macro-regions or as multi-region	<b>Reporting</b> - Additional annual data reporting by the PSBs	New process for communicating outcomes of complaints to stakeholders	
Regional programming quotas for BBC and Channel 3 services	Regional programming should follow respective definitions	<b>Publications</b> – Annual PSB data pack: includes PSB regional production quota delivery. Annual Made Outside London Titles Register: listing details of the productions counted towards the quota		
Have regard to any guidance published by Ofcom	New additional wording highlighting the policy objective of the regional production obligations	<b>Publications</b> - Increase the range and volume of data Ofcom publishes. Create a single interactive digital publication including all relevant data		
Reporting obligation to provide accurate information when requested under our information gathering powers	Substantive base must be operational prior to the point of commission	<b>Monitoring</b> - Introduce spot check monitoring of the PSBs		
	Production fee excluded from production budget criterion			
	Additional clarificatory changes to criteria			
	Self-promotional programming excluded from the quotas			
	New annex containing explanatory notes			
	New reference to the complaints process			
	Two new quota allocation categories: multi-English region and multi-nation outside England			
	Clarificatory changes to the allocation categories			

Source: Ofcom. The text in purple refers to the current regulatory approach. The text in green outlines our proposals for consultation.

## Transitional arrangements

5.87 We recognise that programme making often has a long-lead time and commissioning decisions take place well in advance of when a programme is eventually broadcast. As

such, it may be necessary to put in place a transitional period before some of the changes proposed above would come into effect.

- 5.88 Depending on how the PSBs and their suppliers have been interpreting the Guidance to-date, the impact the various changes we are proposing will have will vary. The advice for producers published by the PSBs in recent days may impact this. Some changes may not have a significant impact on how they meet their regional production obligations and so they may not need much time to implement them. In other cases, they may require a longer period of time to adjust their commissioning processes and working practices.
- 5.89 With the exception of the changes to the data the PSBs should be collecting and reporting which we have already requested, (which will commence in part for titles broadcast from 1 July 2018, and then in full for titles broadcast from 1 January 2019), we currently propose that the rest of the changes (including the additional data reporting point on year of establishment) should take effect with regards to titles broadcast from January 2020. We believe that this should balance the need to provide the PSBs with enough time to implement the relevant changes, with the importance of these changes taking effect as soon as practically possible to improve the efficacy of the regime.

Q11) Do you agree with our proposal for the new Guidance and majority of changes to take effect from January 2020?

# A1. Responding to this consultation

## How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 27 February 2019.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-regional-tv-production-programming-guidance>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [madeoutsidelondonreview@ofcom.org.uk](mailto:madeoutsidelondonreview@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Made Outside London Review Team  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact Kirsty Johnson on 020 7981 3162, or by email to [kirsty.johnson@ofcom.org.uk](mailto:kirsty.johnson@ofcom.org.uk).

## Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

## Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement in spring 2019.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A2. Ofcom's consultation principles

### Ofcom has seven principles that it follows for every public written consultation:

#### Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

#### During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

#### After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## A3. Consultation coversheet

### BASIC DETAILS

Consultation title: Review of Regional TV Production and Programming Guidance

To (Ofcom contact): Made Outside London Review Team

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? \_\_\_\_\_

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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## A4. Consultation questions

### Review of Regional TV Production and Programming Guidance

This consultation details our proposals for changes to the Regional TV Production and Programming Guidance and also sets out the changes we are planning to make to our compliance and enforcement processes. We are not required to consult on our internal processes but would still welcome views from stakeholders on these. The information collected will be used to publish a statement setting out the final outcomes of the review in Spring 2019.

1. Do you agree with our proposed change to articulate the intention of the regional production obligations at the start of the Guidance? (See wording at Annex 7).
2. Do you agree with our proposed changes to the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.
3. Do you agree with the suggested explanatory notes for the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.
4. Do you agree with our proposed changes to the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.
5. Do you agree with the suggested explanatory notes for the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.
6. Do you agree that the off-screen talent criterion should remain the same? If not, please explain why, providing appropriate supporting evidence where possible.
7. Do you agree with the suggested explanatory notes for the off-screen talent criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.
8. Do you agree with our proposed change to exclude self-promotional content from the calculations? If not, please explain why, providing appropriate supporting evidence where possible.
9. Do you agree with our proposed changes to the allocation categories (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.
10. 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.

11. Do you agree with our proposal for the new Guidance and majority of changes to take effect from January 2020?

*Please provide reasons and evidence in support of your response(s)*