

# Consultation response form

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<b>Consultation title</b>	Ofcom's proposed Plan of Work
<b>Full name</b>	[X]
<b>Contact phone number</b>	[X]
<b>Representing (delete as appropriate)</b>	Organisation
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## Your response

Question	Your response
<b>Question 1: Do you have any comments on Ofcom's proposed Plan of Work 2024/25?</b>	Confidential? – N

We would like Ofcom to add an additional work stream to its annual plan.

This would involve a review of the Out-of-London guidelines and also the annual register, which is used to inform and monitor the extent to which productions classified as meeting the out-of-London quota are within the spirit of the requirement.

Ofcom is aware that there remains a concern to those producers who have founded home-grown companies in Wales, but see commissions awarded to companies which claim a substantive base at the point of commission but do not necessarily fulfil the criteria. This practice, known as 'brass-plating', is not in the spirit of the out-of-London requirements, which are designed to ensure a sustainable production base in the UK nations and regions, with investment into those companies remaining in the nation or region and helping to develop and maintain the skills and talent base, facilities and infrastructure.

Ofcom will be aware of the report 'Broadcasting in Wales', published last October by the House of Commons Welsh Affairs Committee, which concluded that "*Brass-plating allows broadcasters to meet their regional production criteria while using production companies that may not be based in Wales. Ofcom acknowledges that relying on the "substantive base" criterion alone provides an op-*

*portunity for the system to be manipulated. We recommend that Ofcom examine whether this criterion alone should be sufficient to qualify a production as being based in Wales. We call on the Government to amend the Draft Media Bill to address this problem”<sup>1</sup>.*

The official response from the UK Government to the committee’s report stated that: *“Public service broadcasters’ quotas for regional programme making are overseen by, and remain a matter for, Ofcom. DCMS officials have raised this matter with Ofcom following the publication of the Committee’s report and we remain of the view that Ofcom have the necessary powers to identify, examine, and if necessary close, any loopholes related to the regulatory regime for regional programme making. The Government therefore does not see a need to legislate in this area.”<sup>2</sup>*

In doing so the Government is making it clear that Ofcom should be looking into this matter, as it already has the appropriate powers to do so.

We also note that this issue is not only one of concern to companies in Wales but elsewhere. For example in a Media Bill debate in the House of Commons, in reference to some tabled amendments to tighten up the Out-of-London requirements, Scottish National Party MP Kirsty Blackman stated: *“New clause 1, which was tabled by the hon. Member for Arfon (Hywel Williams), looks at how the regions are accounted for, the production hours in each of the regions, and making sure that productions are genuinely regional productions, rather than a lift-and-shift from somewhere else. Those issues are important”<sup>3</sup>.*

Therefore it is our view that Ofcom has a responsibility to dedicate a work stream to reviewing the criteria for meeting the Out-of-London quota and the extent to which there is full transparency in terms of the reporting of how programmes met at least two of the three criteria.

Ofcom last reviewed these guidelines and the reporting of how they are met in 2019, five years ago and we believe that given the shift on PSB commissioning and the changes in the landscape, for example with Channel 4 potentially taking part in in-house production, this is a good time to re-examine whether the guidelines and the register are fit-for-purpose. Ofcom carries out its public service broadcasting reviews every five years and so that appears to be a suitable gap to leave between reviews of this important area.

We would ask the guidelines and criteria are revisited in order to determine whether additional elements could be introduced, for example concerning the amount of time a commissioned company has had a substantive base in Wales.

In terms of transparency, in our opinion the current Out-of-London programme registers published by Ofcom fall short in terms of the extent to which they are timely and contain detailed information.

Necessarily evidence around this matter is to some extent anecdotal, given that the out-of-London register is published well after programmes are broadcast, rather than once programmes are commissioned, meaning there can be a two-year lead-in time before a programme has been broadcast and so there circumstances around a company’s base will and operations will have changed in that time.

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<sup>1</sup> [Broadcasting in Wales: Fifth report of Session 2022-23. House of Commons Welsh Affairs Committee. London, Oct 2023, para 142](#)

<sup>2</sup> [Broadcasting in Wales: Government Response to the Committee’s Fifth Report of Session 2022-23; First Special Report of 2023-24. House of Commons Welsh Affairs Committee. London, Jan 2024, p11](#)

<sup>3</sup> [Kirsty Blackman MP. Media Bill Report Stage, House of Commons. 30 Jan 2024, Hansard column 771](#)

We therefore request that Ofcom establish a work stream as part of its annual plan to look at the way out-of-London commissions are reported to make the publication of the data more timely and therefore more useful, as well as working with TAC and the PSBs to encourage the development of better transparency closer to the time of commission..

Being published on an annual basis after programmes are broadcast leaves a long gap between the time they were commissioned.

We recognise that Ofcom is a post-broadcast regulator but at the same time the current reporting feels anachronistic in an era where it is possible to publish information in a more regular manner.

For example, the register could be kept up-to-date online as a searchable database, with programmes posted as they are broadcast, enabling a swifter analysis of the latest out-of-London commissioning trends. We believe this would not just be of benefit to interested third parties but to Ofcom itself, as it would allow it to keep a much closer eye on the situation of out-of-London commissioning.

We are currently discussing with broadcasters how information around new commissions could better demonstrate how the programmes and companies concern meet the criteria. We have so far met with the BBC and Channel 4 and will continue to discuss this with them. However it would also be useful for Ofcom to look at this and specify what kind of information it would find useful. For example could the broadcaster publish at the time of commissioning whether a particular show qualifies as an out-of-London and give information on how the company and programme fits at least two out of the three criteria.

The broadcasters have stated to us that sometimes a programme can end up not being classified as an out-of-London commission, due to a change in circumstances, however we do not see this as a barrier to the initial information being published and then being corrected at a later date.

In order to streamline this process as much as possible there could be a database co-ordinated by Ofcom into which broadcasters and easily input the information.

This type of solution I, we believe something which could be examined as part of our proposed work stream which Ofcom should undertake to look into the out-of-London criteria and reporting.

We therefore would ask that such a work-stream is added to the annual plan, if not to formally consult, then at least review the reporting process and seek views from representatives of the independent production sector, as well as the public service broadcasters who are subject to the requirements, as to how the process can be more transparent and efficient, in order to allay the concerns which are very apparent in the independent TV production sectors in at least some of the UK nations.