

**Ofcom Advisory Committee for Wales**  
**Response to Ofcom's Consultation:**  
**Review of Regional TV Production and Programming Guidance**  
(Published: 19 December 2018).

### **Introduction**

In our response to Ofcom's Call for Evidence last year, which preceded this Review, we noted recent changes to the programme supply market and we listed some key factors that were significant in terms of their impact on network production sourced from Wales. These included the introduction of the outside of England production quotas for Channel 4 in 2010, establishing the BBC's Roath Lock 'Drama Village' in Cardiff Bay, the BBC's commitments, now included in the Operating Licence, to source 5% of its network productions from Wales, market interventions by the Welsh Government and S4C's role in developing and sustaining the independent production sector.

Channel 4's decision, announced at the end of October last year, to establish one of its creative hubs in Bristol, will also have a significant impact on the future supply of network programming from Wales. While it was disappointing that Cardiff's bid to be a hub location was unsuccessful, the broadcaster claimed that, "locating in Bristol will also enable Channel 4 to work closely in partnership with Cardiff and its production sector – with the opportunity to further accelerate the growth of the creative cluster around South West England and South Wales." Channel 4 also committed to developing new partnerships with Cardiff, Birmingham and Manchester, adding that it would be spending up to £250m more in the Nations and Regions over the next five years.

The Consultation document identifies a number of areas where, based on anecdotal evidence from a range of stakeholders, the current guidance needed tightening, for example in relation to the practice of creating 'brass plate operations' where an office is established but without staff and the use of offices in the nations and regions just for the duration of a production, which may in effect just be location offices. We therefore welcome Ofcom's intention to tighten the rules around the concept of a 'substantive base', which also reflect our suggestion, made in our earlier response to the Call for Evidence, that the substantive base criterion should be amended to require offices to be open for a reasonable period before programming produced there can be counted as production outside London.

The section below sets out our responses to the specific questions in this consultation, which propose amendments to the current guidance and explanatory notes. We therefore broadly welcome the Review conducted by Ofcom, particularly given the rapidly changing nature of the programme supply market.

### **Responses to the Consultation Questions:**

#### **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).**

We support this proposal and we agree that it is valuable for production companies and the public service broadcasters to keep the policy objectives in mind when assessing whether a production's format or approach appropriately meets the guideline requirements. We welcome the emphasis in the draft Guidance and explanatory notes, on the importance of strengthening television production

in the nations and regions and in addition we support the need as stated in the guidance to ensure that audiences have access to programmes which are relevant to them and their local communities.

**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.**

In our response to the original call for evidence in relation to this Review we stated that, in relation to the substantive base criterion, “we believe that the criterion would be strengthened if it required producers to demonstrate that a substantive base had existed 18 months prior to commissioning.” We were very pleased to see that Ofcom has adopted our attempt to make the actual criteria more substantial by including a proposed strengthening of the criteria in this area. We therefore welcome the new proposed wording in the guidance, “the production in question must be made from that substantive base. The base should already be operational prior to the point of commission...” although we still believe that a minimum ‘operational period’ should be specifically stated and we adhere to our original proposed period of 18 months, which we believe would be reasonable. In particular securing an operational base significantly ahead of the production period should support the objective, stated in the guidance notes, of the need to ensure that, “the company making the title will have an authentic presence in the nation or macro-region in which it has its office and will be contributing to that local area’s creative economy on an ongoing basis.”

**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.**

We accept that the guidance and explanatory notes should be suitably flexible and that it would not be appropriate at this stage to specify minimum staffing levels or mandate the use of specific job titles such as executives or senior personnel. The true test should be whether key individuals working at the base have the responsibility for making executive decisions or a significant leadership role. We believe that the explanatory notes regarding the need for a substantive base to be ‘operational prior to the point of commission’ are helpful in strengthening this requirement. While we would prefer that a minimum period was specified, we support the requirement that, in the case where the establishment period is short, the production company and broadcaster would have to demonstrate how the base is meeting all aspects of the criterion.

**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.**

We agree with Ofcom’s analysis which acknowledges that sources of production funding have changed significantly in recent years with a greater role played by third party investors, for example in Wales, in the case of high-end drama series. The revised guidance properly acknowledges this, which allows funding from third parties to be included as part of the production budget.

**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.** We believe these notes are helpful in bringing additional clarification to the treatment of specific costs such as travel, overheads and spend abroad.

**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.** We agree that the emphasis in assessing whether individual employees or freelancers are part of the 'production talent' should depend on the degree to which such individuals had a creative role in the production. However, we also accept that it may not always be easy to differentiate between creative talent and peripheral roles.

**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.**

We agree with this proposal as such content requires very little or no material from the programmes mentioned in the promotions to be provided. Such content therefore can not be seen as programming in the way envisaged by the guidance.

**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; Review of Regional TV Production and Programming Guidance 71 b) more comprehensive data publications; c) proactive monitoring by Ofcom; and d) a clear articulation of the complaints process.**

In our response to Ofcom's Call for Evidence in relation to this Review, we noted the useful picture provided by The Ofcom Register of the programmes/series supplied by each macro-region or nation, including Wales. However, we suggested that, in the interest of transparency, it would be very helpful if the Register provided greater detail in relation to location, hours of output and spend. We also suggested that it would also be useful if the Register identified the source of a production's IP, which is central to revenue streams and to the objective of supporting the creative economy.

**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).**

We believe that the proposed timing for when the Guidance takes effect is appropriate.

**ACW**

**March 2019**