

A6. Summary of Call for Evidence responses

Background

A6.1 As part of our review of the regional production and regional programming guidance (‘the Guidance’) for public service broadcasters, we published a Call for Evidence (‘CFE’) in March 2018. We received 28 responses from a wide range of stakeholders. Given the amount of information and level of detail provided, this Annex serves to provide a summary of the key themes and issues identified¹. We have included tables which set out the range of stakeholder ideas for change and our analysis of those suggestions based on the evidence we have received to date. For further information on the detail of stakeholder proposals please refer to the CFE responses directly, which are published on our website.²

The regional production regime

A6.2 A small number of stakeholders mentioned the regional production quotas in their responses. Those that commented suggested Ofcom should go further and introduce more granular obligations. For example, the Campaign for Regional Broadcasting Midlands and Professor Robert Beveridge suggested that the Government macro regions currently used to determine the area of the UK in which the quotas have been met should be disaggregated further, enabling quotas for the English regions to be introduced and production in the English regions be measured more precisely.^{3 4}

A6.3 A few respondents, including Creative England, commented on the impact the consolidation of ITV has had on regional production. They suggested that this has reduced both the presence and strength of production companies outside of London; as well as the corresponding regional voices and stories in content serving audiences in the English regions.⁵ The Scottish Parliament’s Culture, Tourism, Europe and External Affairs Committee⁶ also raised this issue with regards to impact in Scotland. A number of Scottish stakeholders suggested we introduce nation-specific quotas for one or more of the commercial PSB channels, while the Scottish Government also called for genre quotas to be introduced.⁷

¹ Some respondents raised points that were out of scope for this review, such as competition queries about BBC Studios and the potential implications of the new BBC Scotland channel. We have not included these comments in this annex.

² [Ofcom Call for Evidence: Review of Regional TV Production and Programming Guidance](#)

³ [Campaign for Regional Broadcasting response to the Ofcom Call for Evidence](#) p.1

⁴ [Professor Robert Beveridge response to the Ofcom Call for Evidence](#) p.10

⁵ [Creative England response to the Ofcom Call for Evidence](#) p.1

⁶ Please note: 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.

⁷ [Scottish Parliament: Culture, Tourism, Europe and External Affairs Committee response to the Ofcom Call for Evidence](#) p.4; [STV response to the Ofcom Call for Evidence](#) p.10; [Scottish Government response to the Ofcom Call for Evidence](#) p.3.

- A6.4 Broadly speaking, there was support for both the guidance-based approach to defining regional production and the broad substance of the three defining criteria. There was little appetite for a radically different system for delivering the regional production obligations. Of those that did call for an alternative approach, Directors UK suggested in their CFE response that we should introduce a points-based system for key production talent.⁸
- A6.5 PSBs warned against making substantial changes to the Guidance and noted that any changes were likely to increase the regulatory burden and effect their ability to meet the quotas. ITV explained the range of pressures it faces and argued that any increase in their obligations would need to be proportionate to the industry's economic forces.⁹

Suggestions for change: the regional production regime

Stakeholder suggestions	Ofcom's response
1. The PSBs should be subject to production quotas for each of the different English regions.	As outlined in the main consultation document, this review of the Guidance is not a mechanism through which we seek to make changes to the PSBs' quotas. Its focus is how the PSBs comply with and deliver their current obligations. Ensuring the existing obligations work effectively is key. Assessing whether changes to the obligations are desirable or necessary could be considered as part of our PSB reviews and licensing processes.
2. Nation specific regional production quotas should be extended to ITV, Channel 4 and Channel 5.	
3. Genre quotas should be introduced for regional production.	
4. A points-based system, particularly for talent should be introduced	There was limited appetite for moving away from the three-criteria approach. We note that the BFI operates a points-based system for its cultural test for film e.g. awarding different numbers of points for different job roles, amongst other things. It is not clear from the evidence received to date that a fundamental change to the system is necessary or proportionate at this time. Our current view is there is more that can be done to make the existing system more effective and we consider that the proposed package of measures should help achieve this.

⁸ [Directors UK response to the Ofcom Call for Evidence](#) p.11

⁹ [ITV response to the Ofcom Call for Evidence](#) p.4

The Guidance: The criteria

A6.6 Stakeholder responses set out their views on the three criteria defining a regional production are currently working in practice and made suggestions for how they could be improved. They commented on how the criteria work together and separately.

Considering the criteria collectively

A6.7 The CFE set out that the criteria were designed to be flexible to accommodate the unique nature of each production. Some respondents suggested this has led to the criteria not always being applied consistently.

A6.8 To help remedy this, some stakeholders (including the BBC), recommended Ofcom provide further clarification about each of the criteria. They also suggested that some additional pan-industry guidance could be developed to sit alongside the definitions in the Guidance. The BBC said this would help strengthen the delivery of the Guidance and the consistency of application by broadcasters and producers.¹⁰ The BBC and Channel 4 suggested Ofcom set up a working group for broadcasters and producers to address issues of interpretation and share examples of best practice.¹¹

A6.9 Currently, productions need to meet two out of the three criteria to qualify as regional. Some respondents, including the Ofcom Advisory Committee for Wales, proposed making all three criteria mandatory, which, they considered would help ensure the criteria are always effective and encourage production companies to invest in production offices outside of London for every regional production.¹²

A6.10 Some stakeholders cited examples of each of the criteria being applied incorrectly and instances of them being applied in ways contrary to the policy intent and suggested all three of the criteria be tightened to introduce greater rigour to the system. We explore the different ideas suggested in greater detail below.

Suggestions for change: considering the criteria collectively

Stakeholder suggestions	Ofcom's response
5. Further guidance should be introduced to sit alongside the criteria definitions to encourage greater consistency in application.	<p>We agree additional clarification around the criteria defining regional productions would be helpful.</p> <p>We propose making some changes to the wording of the substantive base and production budget criteria to make it explicitly clear how these criteria should be fulfilled. Please refer to paragraphs 5.11 to 5.40 in Section 5 for more detail.</p> <p>We also propose introducing a new annex to the Guidance containing explanatory notes and Q&As. This would set out our</p>

¹⁰ [BBC response to the Ofcom Call for Evidence](#) p. 10

¹¹ [Channel 4 response to the Ofcom Call for Evidence](#) p.22

¹² [Ofcom Advisory Committee for Wales response to the Ofcom Call for Evidence](#) p.4

	<p>expectations for how the criteria should be applied and provide broadcasters and producers with more clarity. Please refer to paragraph 5.12 in Section 5 and Annex 7¹³ for more detail.</p> <p>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.</p>
<p>6. Ofcom should set up a working group for broadcasters and producers.</p>	<p>We currently consider that the changes to the criteria and explanatory notes that we are proposing, as outlined above, should provide sufficient guidance for the broadcasters and producers.</p> <p>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.</p>
<p>7. All three criteria should be made mandatory.</p>	<p>Making all three criteria mandatory would reduce the flexibility of the current regime.</p> <p>In 2017 24% of regional production spend and 19% of regional production hours met two criteria. Such a change would prevent regional productions being delivered by production companies who are solely based in London and would also impact nations and regions producers who plan to meet one criterion in addition to substantive base.</p> <p>It would reduce the flexibility that allows programmes to be made across the whole of the UK when the expertise, equipment or facilities are not available outside London. It may also impact on the type of productions that could be made in the nations and regions. For example, a production with a significant technical requirement, such as special effects, that could only be sourced from London might not be able to meet the production budget criterion. Each of these possible consequences has the potential to reduce the diversity and quality of the resulting regional productions.</p> <p>Based on the evidence we have received to date it is not clear to us that a change that generates the impacts described above is either desirable or proportionate.</p> <p>The current level playing field maximises the commissioning opportunities available to all suppliers, which should encourage broadcasters to commission as much programming made in the nations and regions as possible.</p> <p>We are currently of the view that our proposed package of measures to ensure at least two of the three criteria are applied more robustly should deliver the necessary improvements in the regime in a proportionate manner.</p>

¹³ [Annex 7 – Proposed new Guidance and explanatory notes](#)

Considering each criterion individually

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.”

- A6.11 The Substantive base criterion was the topic that generated the most detailed comments and the greatest volume of responses to the CFE. Several stakeholders, including the Scottish Government, considered this criterion to be the most important in helping to strengthen the long-term development of the sector.¹⁴
- A6.12 Stakeholders provided anecdotal evidence of this criterion not being fulfilled correctly. This included the suggestion that “brass plate” offices (whereby companies claim to have an office in the nations and regions, but do not have staff or productions genuinely based there) are sometimes used to fulfil this criterion.¹⁵ Teledwyr Annibynnol Cymru (TAC) 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.¹⁶
- A6.13 Stakeholders also cited examples of ways in which this criterion can be fulfilled which they believe are not in-line with the policy intent. Industry body Pact gave examples of “pop-up” offices - set up in the nations and regions for the duration of a production only, with no intention to keep open afterwards.¹⁷ Stakeholders are concerned that this approach limits the long-term impact regional productions can make to an area.
- A6.14 Some raised concerns about production companies with offices based just outside the M25, questioning how much these contribute towards the policy objective when they are still so close to London.¹⁸
- A6.15 Strengthening this criterion so that businesses are encouraged to permanently and genuinely base themselves in the nations was considered key for improvements to regional productions.¹⁹ With this in mind, some stakeholders such as Tinopolis recommended that we make this criterion compulsory as it believes that it is the most important criterion in

¹⁴ [Scottish Government response to the Ofcom Call for Evidence](#) p.4

¹⁵ [Regional Production Division of BECTU response to the Ofcom Call for Evidence](#) p.7

¹⁶ [TAC response to the Ofcom call for Evidence](#) p.3

¹⁷ [Pact’s response to the Ofcom Call for Evidence](#) pp. 8&13

¹⁸ [Indie Club response to the Ofcom Call for Evidence](#) p.18

¹⁹ [Scottish Government response to the Ofcom Call for Evidence](#) p.4

terms of judging whether a production genuinely qualifies as regional or national.²⁰ Toby Stevens also recommended that in order to improve diversity in programming we need to encourage greater production *from* the nations and regions, rather than production *in* the nations and regions.²¹

- A6.16 To help foster more permanent substantive bases, some respondents suggested we introduce a requirement for a minimum amount of time for the base to be established. For example, the Ofcom Advisory Committee for Wales suggested the substantive base should exist 18 months prior to being able to qualify for this criterion.²²
- A6.17 Some stakeholders raised concerns about what they saw as inconsistencies in the interpretation of “senior personnel” and recommended we specify which senior job roles should be permanently employed from the substantial base. The Scottish Government suggested defining senior personnel as company directors and to require evidence via tax codes or postcodes.²³ Some, including Tern TV suggested using the domicile tax status of employees as an indicator of whether an office is their usual place of employment. Tern TV added that “the substantive base should include not just senior management of production, but pitching resources, and control of those resources, being permanently located in the nation/region, i.e. domicile for tax purposes”.²⁴
- A6.18 Tinopolis recommended Ofcom take responsibility for visiting and verifying production companies’ substantive bases and publishing an approved supplier list for broadcasters to commission from. It argued that this would help ensure the criterion is properly implemented rather than relying on broadcasters and producers to self-certify compliance.²⁵

Suggestions for change: substantive base

Stakeholder suggestions	Ofcom’s response
8. Make the substantive base criterion mandatory.	The majority of regional productions already meet the substantive base criterion (88% of regional spend and 91% of regional hours in 2017). However, the flexibility to meet the production budget and talent criteria instead of substantive base is designed to ensure all producers have a level playing field when pitching for regional production commissions. This in turn ensures that the PSBs can draw on the broadest range of talent to make the widest range of productions possible in a way that also benefits the nations and regions production sector and should encourage broadcasters to commission as much programming made in the nations and regions as possible.

²⁰ [Tinopolis response to the Ofcom Call for Evidence](#) p.3

²¹ [Toby Stevens response to the Ofcom Call for Evidence](#) p.3

²² [Ofcom Advisory Committee for Wales response to the Ofcom Call for Evidence](#) p.4

²³ [Scottish Government response to the Ofcom Call for Evidence](#) p.4

²⁴ [Tern response to the Ofcom Call for Evidence](#) p.3

²⁵ [Tinopolis response to the Ofcom Call for Evidence](#) p.3

	<p>Limiting the types of companies which can make regional productions may also impact on the genres of productions that would be made from the nations and regions.</p> <p>We are currently of the view that the evidence we have received to date does not support the case for a change of the scale and impact proposed here. As part of our proposed package of measures we have included proposals to strengthen the substantive base criterion within the current system. Alongside our other proposals to ensure that each of the criteria are applied more robustly we are of the view this approach should deliver improvements in the regime in a proportionate manner.</p>
<p>9. The substantive base criterion should stipulate how long the base has been established.</p>	<p>In Section 5 paragraph 5.18 we outline our proposal to require a substantive base to be operational prior to the point of commission. We are not currently proposing to introduce an arbitrary period of establishment, as we want to ensure the full circumstances surrounding a regional production can be taken into account when it is commissioned.</p> <p>However, we have proposed an explanatory note to the Guidance to address this point. We have also proposed adding a new data requirement to detail the year a production company making a regional production was established. See Section 5 paragraph 5.24. We would expect broadcasters to pay close attention to how relatively new companies they commission are meeting all aspects of the substantive base criterion.</p>
<p>10. The substantive base criterion should stipulate which senior employees it refers to.</p>	<p>We recognise that job titles vary by employers, by genre and over time. For this reason, we do not consider it appropriate to prescribe specific titles or job roles that qualify as “senior personnel”.</p> <p>However, to aid stakeholders in their application of this criterion, we have outlined in our proposals that we would expect this element to be fulfilled by individuals responsible for making executive decisions and/or having a significant leadership role in relation to the production in question. See Annex 7²⁶ for more information.</p>
<p>11. The usual place of employment of employees working at a substantive base should be based on their domicile tax status.</p>	<p>This proposal came primarily from Scottish respondents.</p> <p>Scotland is the only nation within the UK to have a nation specific tax code. This approach would therefore not be applicable to the other nations or the regions of England.</p> <p>Further, a person’s domicile tax status is not necessarily an accurate indication of where they work, or indeed where they live. For example, it is possible to be a UK resident but not UK domiciled, or</p>

²⁶ [Annex 7 – Proposed new Guidance and Explanatory notes](#)

	<p>to move to, or work in, Scotland but not be considered a permanent resident. Such a change could disadvantage those who are genuinely working and/or living in an area, but who are domiciled elsewhere.</p> <p>Based on the information available to date we also believe such changes would be too restrictive, limit the ability for flexibility in employee arrangements, and could easily result in unintended consequences. For these reasons we currently are not minded to include this suggestion in our proposed changes.</p>
<p>12. Ofcom should verify the substantive base of production companies to create an approved suppliers list for broadcasters to use for regional productions.</p>	<p>It is the broadcaster’s responsibility to comply with its licence obligations and have regard to the Guidance in meeting the definition of a regional production. We currently consider that the resource and cost implications of this proposal mean it is neither proportionate nor practicable.</p> <p>We consider the package of measures proposed would deliver similar outcomes in a less resource intensive and more agile manner, as such we are not currently minded to make this change</p>

Production budget criterion

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.”

- A6.19 Most stakeholders who commented on this criterion considered that the 70% level should not be increased. Broadcasters and others, such as Pact said the level struck the right balance between being challenging and offering necessary flexibility.²⁷ STV described the challenges of meeting the criterion especially when broadcasters require the use of particular London based talent or facilities.²⁸
- A6.20 Andy Sumner argued that an increase in the level would be welcome as it was set to reflect the market in 2004, not 2018. He suggested a raise would compel productions to be completed regionally, which would help to develop the skills base in the nations and regions and drive economic benefits.²⁹
- A6.21 Concerns about how the criterion is applied were raised. The Indie Club’s response outlined a case whereby a post-production company based in the nations and regions said

²⁷ [PACT response to the Ofcom Call for Evidence](#) pp.9-10

²⁸ [STV response to Ofcom Call for Evidence](#) p.7

²⁹ [Andy Sumner response to the Ofcom Call for Evidence](#) pp.4&7

that it had been offered payment to be credited on a production, when it had no such involvement and the work had been carried out in London.³⁰

- A6.22 Some stakeholders had concerns about whether the money being spent outside of London was actually staying outside of London. The Ofcom Advisory Committee for Northern Ireland was concerned that some of the money spent on Northern Irish productions was flowing back to London where companies are often based or headquartered.³¹ It suggested tighter controls were needed to police the production budget.
- A6.23 Tinopolis suggested that international production spend should be excluded from contributing to the production budget criterion threshold. It noted that certain genres such as sport and drama can necessarily involve a lot of international filming and productions can therefore struggle to meet the levels for the 70% level. Tinopolis believes the intention of the criteria would still be met if the levels only concerned spend and talent in the UK and excluded international spend.³²
- A6.24 Equity’s response was focused on the need to secure more opportunities for local on-screen talent in the nations and regions, as these can be concentrated in London. It suggested removing the exclusion of on-screen talent from the production budget criterion but recognised that doing so could skew the quotas given the cost of on-screen talent can be significantly high on some productions.³³

Suggestions for change: production budget

Stakeholder suggestions	Ofcom’s response
13. The 70% level for the production budget criterion should be increased.	<p>We received very little evidence from stakeholders to suggest that the 70% level should be increased at this time. Most stakeholders who commented on this issue felt that 70% was the right level.</p> <p>The current level provides useful flexibility by allowing some of the production budget to be spent in London in instances where specialist resources, for example special effects, may not be available locally.</p> <p>Based on the available evidence to date we currently do not consider it appropriate to increase the 70% level at present.</p>
14. The policing of the production budget criterion should be tightened up.	<p>As detailed in Section 5 paragraphs 5.31 to 5.40 we are proposing some clarifications of co-productions and productions fees. We are of the view that these, along with the explanatory notes, and additional reporting requirements for the PSBs on both production budget and talent (a subset of production budget), and changes to our compliance and enforcement processes should strengthen the delivery of this criterion.</p>

³⁰ [Indie Club response to the Ofcom Call for Evidence](#) p.19

³¹ [Ofcom Advisory Committee for Northern Ireland response to the Ofcom Call for Evidence](#) p.1

³² [Tinopolis response to the Ofcom Call for Evidence](#) pp.6-7

³³ [Equity response to Ofcom Call for Evidence](#) pp.4-5

<p>15. It should be made clear that the criterion should be based on the entire production budget including any third-party funding or grants, and not just 70% of the relevant PSB's contribution to the budget.</p>	<p>We agree that the production budget criterion should be applied to the entire production budget. Based on the evidence received to date we do not consider that it is practical to separate out the PSB's contribution. If the budgets were separated this could lead to a comparatively smaller amount of spend outside of the M25 and limit the positive impact of the requirements within the local production ecology. We agree there is a need to clarify this point to ensure consistency and have included a proposed clarification in the Guidance as part of this review. It is our understanding that most PSBs already take this approach.</p>
<p>16. Production budget criterion should exclude international spend.</p>	<p>The regional production obligations support and strengthen television production outside of London within the UK. This is made clear in the drafting of the Communications Act 2003 and the BBC Charter and Agreement. Productions which have international elements 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.</p> <p>Excluding overseas production costs when calculating if the relevant budget threshold has been met would not be in line with the policy intention and could mean programmes filmed mainly abroad would count towards the regional production quota, despite only making a very small contribution towards the UK production sector outside of the M25. We are, therefore, not minded to make this change.</p>
<p>17. The exclusion of on-screen talent from the criterion should be removed.</p>	<p>The Guidance explains that the cost of on-screen talent is currently excluded from the production budget criterion because its significant proportion of cost on some production budgets could skew the underlying policy intention of the quotas. We currently remain of this view and, therefore, do not propose to change this aspect of the criterion.</p>

Off-screen talent criterion

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.”

A6.25 This generated few substantial comments from stakeholders. Points were raised about the 50% level, with some suggesting it be raised to reflect the increase in volume of talent in the nations and regions since 2004.³⁴ BECTU argued that the existing level allows for half of

³⁴ [Andy Sumner response to the Ofcom Call for Evidence](#) p.5

the talent working on qualifying productions to legitimately come from London, which weakens the impact of the quota and dilutes employment opportunities for talent in the nations and regions. It suggested that the qualifying threshold should increase from 50% to 80%.³⁵

- A6.26 Some stated that the flexibility afforded by the threshold was vital and should not be increased. Pact stated that the level allows specialist skills from London to be brought into projects when necessary.³⁶ Broadcasters, including STV explained that meeting this criterion remains a challenge and can be difficult to meet on productions with small crews.³⁷
- A6.27 Caitriona Noonan stressed the importance of adjusting the criterion so that PSBs are encouraged to recruit and nurture local senior talent, including writers, producers and editors. She argued that encouraging more spend on these roles outside of London would help build the local television sector.³⁸
- A6.28 Some respondents said this criterion was either not being fulfilled correctly or applied in ways that appear contrary to the policy intent. Examples given included: freelance staff based in London being asked by production companies to list their address of a friend or family member outside the M25 as their own in order to count towards the 50% threshold³⁹; and crewing companies outside the M25 used to employ off-screen talent, so they could be counted as regional, regardless of their usual place of work or home address.⁴⁰ Nations and regions based talent reported being asked to work in London to help titles qualify as regional productions.⁴¹
- A6.29 Tinopolis suggested that international production talent should be excluded from contributing to the talent criterion threshold for the same reasons as outlined in A6.23.⁴²
- A6.30 Equity was among a small number of stakeholders who mentioned on-screen talent. As with the production budget, it argued that Ofcom should take steps to encourage the casting of local on-screen talent in regional production. It also proposed that we should 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.⁴³

Suggestions for change: off-screen talent

Stakeholder suggestions	Ofcom's response
18. The 50% level for the off-screen production talent criteria should be increased.	Opinion from stakeholders was divided on whether there are sufficient levels of skills available in the nations and regions to make an increase in the minimum spend threshold achievable without

³⁵ [Regional Production Division of BECTU response to the Ofcom Call for Evidence](#) pp. 4&8

³⁶ [PACT response to the Ofcom Call for Evidence](#) pp.10-11

³⁷ [STV response to Ofcom Call for Evidence](#) p.7

³⁸ [Caitriona Noonan response to the Ofcom Call for Evidence](#) p.5

³⁹ [Toby Stevens response to the Ofcom Call for Evidence](#) pp.2-3

⁴⁰ [Toby Stevens response to the Ofcom Call for Evidence](#) pp.2-3

⁴¹ [Indie Club response to the Ofcom Call for Evidence](#) p.17

⁴² [Tinopolis response to the Ofcom Call for Evidence](#) pp.6-7

⁴³ [Equity response to Ofcom Call for Evidence](#) pp.5

	<p>damaging productions. As a result, opinion was also divided as to whether the 50% level should be raised.</p> <p>Having reflected on the information received to date we are currently of the view the existing level remains appropriate, affording the necessary flexibility for London-based talent to be used in instances where it is not possible to fill roles locally.</p> <p>Based on interactions with regional talent, we accept that there may have been instances where equivalent skills have been available locally and roles have still been filled with London based talent. To better understand the talent distribution on nations and regions production we plan to undertake a survey of producers to benchmark the current mix of London and nations and regions talent and resources employed on regional productions.</p>
<p>19. The off-screen production talent criterion should exclude international spend.</p>	<p>The objective of the regional production obligations is support and strengthen television production outside of London within the UK. This is made clear in the wording of the Communications Act 2003 and the BBC Charter and Agreement. Productions which have some international elements can count as regional productions, provided they can 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.</p> <p>It would not be in-line with the policy intent to exclude overseas talent costs when calculating the 50% threshold and could result in programmes mainly filmed abroad counting towards the regional production quota, despite making only a small contribution towards the production sector in the UK outside of the M25. We, therefore, do not propose to make this change.</p>
<p>20. An obligation should be added to the Guidance for broadcasters and producers to undertake at least one local casting session in the locality of the production.</p>	<p>We recognise that on-screen talent is an important part of the production industry and acknowledge that local casting initiatives may benefit local on-screen talent. (This is likely to be most pertinent to drama productions).</p> <p>However, based on the information received to date we are currently of the view that a detailed, genre specific, regulatory intervention operating deep within the production process would be unwieldly and would not be proportionate</p> <p>In our view, 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. We encourage broadcasters to take account of the suggestions outlined above.</p>

The Guidance: The role of London

- A6.31 Several respondents argued that London plays a dominant role in regional production, both as the sole base or headquarters of companies gaining regional commissions, and as a key supplier of talent and facilities.
- A6.32 The Scottish Government believes that around half of the companies listed on the Register⁴⁴ as providing network productions from Scotland were London based, or secondary branches of these. It claimed that this does very little to strengthen the production sector in Scotland and prevents the sector from maturing.⁴⁵ London companies were seen by some as dominating particular genres, such as drama. However, some respondents, including Channel 4, supported London-based companies being able to make regional productions arguing that they can bring economic benefits and help to kick start or grow a sector in an area.⁴⁶
- A6.33 A number of stakeholders, including The Indie Club⁴⁷ raised the issue of London-based talent being used on regional productions, arguing this reduced opportunities for those based in the nations and regions to develop skills and grow careers. They argued without change, talent in the nations and regions will not be given the opportunities to grow and the industry outside the M25 will not develop in a way that produces sustainable production centres for the long term.
- A6.34 The Indie Club also suggested that developing new talent from the nations and regions is crucial to increasing creativity and improving the diversity of talent in the production industry as a whole. It argued that the influx of London talent in regional productions has limited the opportunities for people outside London, particularly those from poorer backgrounds, to break into TV. It suggested this impacted on the socio-economic diversity of production talent and reduced the range of editorial perspectives included in UK productions.⁴⁸
- A6.35 The capacity of the production skills base outside of London clearly varies by genre, role and geographic area. Stakeholders, including Channel 4, TAC, Tinopolis and STV cited post-production as the part of the production process most likely to take place in London. The Indie Club argued that when this occurs it reduces the number of jobs and the economic legacy of a production achieved in the nations and regions.⁴⁹ However, other stakeholders stated that it can be difficult to post-produce outside of London, including Channel 4, who argued that there are sometimes shortages in facilities and talent in the nations and

⁴⁴ The Register is an annual Ofcom publication called the 'Made outside London programme titles register'. It lists all the PSB network programmes made outside of London that counted towards their regional production quotas. Please refer to Section 2, paragraph 2.22 for more information.

⁴⁵ [Scottish Government response to the Ofcom Call for Evidence](#) pp.1-2

⁴⁶ [Channel 4 response to the Ofcom Call for Evidence](#) pp.8&27-29

⁴⁷ [The Indie Club response to the Ofcom Call for Evidence](#) p.5

⁴⁸ [The Indie Club response to the Ofcom Call for Evidence](#) pp.5-6

⁴⁹ [The Indie Club response to the Ofcom Call for Evidence](#) pp.5-6

regions.⁵⁰ Tinopolis also stated that it can be difficult to find experienced editors outside of London.⁵¹

- A6.36 There was a general sense from some stakeholders that the use of London-based companies, talent and resources could result from commissioners being largely London-based and relying on talent they know (which will tend to be London based). Directors UK suggested that PSBs need to be encouraged to take more risks. It also made a connection between the need to develop new talent and attracting younger viewers through more diverse programming.⁵²
- A6.37 The practice of “lift and shift” was also raised in several responses, and again divided opinion. Respondents such as TAC felt that lift and shift does not support the growth of the local talent and stifles indigenous production companies.⁵³ Whereas stakeholders such as Channel 4, suggested that in some cases this approach has contributed to the creation of centres of excellence and long-term growth in some areas outside the M25.⁵⁴
- A6.38 Respondents who were concerned about the size of London’s role in regional production want to see the balance in the relationship readdressed, especially with in the areas of commissioning and post production. For example, the Indie Club suggested Ofcom should make it clear that post production should be completed in the macro-region it is set to be assigned to, other than in exceptional circumstances.⁵⁵ Pact suggested that the broadcasters should be encouraged to post-produce outside of London, but that it would not be in favour of stipulating that this must happen as there are instances where that is not practicable.⁵⁶
- A6.39 Some stakeholders suggested that London-based companies (i.e. that do not meet the substantive base criterion) could face different requirements to ensure they make more of an impact in the nations and regions. For example, 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.⁵⁷ The Scottish Government proposed that where the substantive base criterion is not met, productions should meet higher budget and talent criteria thresholds.⁵⁸ Those who wanted to prevent London-based companies from making regional productions all together suggested that the substantive base criterion should be made mandatory.
- A6.40 Directors UK also stated that to achieve a transformative impact would require commissioners, production companies and key decision makers to be based in the nations and regions. It claimed this would encourage creative companies, post production and

⁵⁰ [Channel 4 response to the Ofcom Call for Evidence](#) p.29

⁵¹ [Tinopolis response to the Ofcom Call for Evidence](#) p.10

⁵² [Directors UK response to the Ofcom Call for Evidence](#) p.8

⁵³ [TAC response to the Ofcom Call for Evidence](#) p.4

⁵⁴ [Channel 4 response to the Ofcom Call for Evidence](#) p.8

⁵⁵ [The Indie Club response to the Ofcom Call for Evidence](#) p.11

⁵⁶ [Pact response to the Ofcom Call for Evidence](#) p.14

⁵⁷ [Pact response to the Ofcom Call for Evidence](#) p. 7

⁵⁸ [Scottish Government response to Ofcom Call for Evidence](#) p.5

talent to be based and invest in the nations and regions.⁵⁹ Riverhorse TV also argued that there should be a requirement to hand over a degree of creative control in different areas of the UK to help promote alternative cultural voices.⁶⁰

A6.41 As well as the Indie Club’s points raised in paragraph A6.34 we received a number of additional responses to our CFE linking on-screen representation and portrayal to the use of regional talent. A range of respondents made a connection between improving the diversity of off-screen talent and improving representation and portrayal on screen. Directors UK stated “Ensuring nations and regions representation both in front of and behind camera, and to serve and represent audiences across the entire UK, can only be truly achieved if the people making the programmes live and work in the regions themselves”.⁶¹ However, the BBC flagged that representation and portrayal does not necessarily follow production activity⁶² and ITV agreed that although representation and portrayal can flow from some regional productions, it can also be delivered by productions made by London based productions. It cited Broadchurch, Endeavour and Grantchester as examples.⁶³

Suggestions for change: the role of London

Stakeholder suggestions	Ofcom’s response
21. Alter the Guidance to require the PSBs to undertake post-production on regional productions outside of London.	<p>It is unclear from the evidence we have currently received that such a change would be a proportionate response to address an issue where the opinion is so mixed on whether the existing volume and mix of skills and facilities in the nations and regions could currently support such a change.</p> <p>We plan to obtain a more detailed understanding of the mix of London and nations and regions talent and resources, including the use of post-production facilities, by carrying out an industry survey.</p> <p>Our view at present is that the range of industry initiatives currently unfolding in the nations and regions may encourage more post-production outside London (e.g. 4 All the UK, and the Farm opening new sites in Manchester and Bristol).</p> <p>We therefore believe it would be premature, at this time, to include further regulatory measures, beyond those which we have proposed. However, we would encourage 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 post-production facilities.</p>
22. Alter the Guidance to require the PSBs to base commissioners	Regional production is one of a range of regulatory obligations the PSBs must deliver. Each broadcaster needs to incorporate its

⁵⁹ [Directors UK response to the Ofcom Call for Evidence](#) p.3

⁶⁰ [Riverhorse – Mike Todd response to the Ofcom Call for Evidence](#) p.1

⁶¹ [Directors UK response to the Ofcom Call for Evidence](#) p.13

⁶² [BBC response to the Ofcom Call for Evidence](#) pp. 20-21

⁶³ [ITV response to the Ofcom Call for Evidence pp. 11-12](#)

<p>and key decision makers outside of London.</p>	<p>approach to regional production within its wider remit. We note and welcome announcements from three PSBs aimed at boosting their regional production strategies to increase their engagement with, or representation in, the nations and regions.</p> <p>We believe broadcasters are best placed to set their own regional production strategies and, therefore, do not currently propose to make this change. However, we do encourage the broadcasters to consider the impact of London based decision making when developing their regional production strategies.</p> <p>We plan to conduct a survey of the PSBs to better understand how commissioning staff and key decision makers are located around the UK.</p>
<p>23. 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.</p>	<p>We consider that all producers should be able to pitch for regional commissions regardless of their location. It is our view that all three criteria, applied correctly, contribute to regional production and should retain equal weight in this system.</p> <p>Based on this reasoning, the evidence received to date, and the increased regulatory burden attached to these proposals, we do not currently consider such changes would be appropriate or proportionate.</p>
<p>24. Where the substantive base criterion is not met, productions should meet higher budget and talent criteria thresholds.</p>	<p>Based on this reasoning, the evidence received to date, and the increased regulatory burden attached to these proposals, we do not currently consider such changes would be appropriate or proportionate.</p>
<p>25. Make the substantive base criterion mandatory.</p>	<p>Please refer to our response to suggestion 8 above.</p>

Allocating Titles

- A6.42 Each regional production is required to be assigned to either Scotland, Wales, Northern Ireland, one of the three English macro-regions⁶⁴ or as ‘multi-nation/region’. As most productions meet all three criteria, titles tend to be allocated based on where most of the criteria are met. The Guidance explains more about the process by which productions should be allocated.⁶⁵
- A6.43 There was a general sense from those who commented on this area that the allocations process can be confusing and is not always a good reflection of where a programme was made. STV suggested it could be possible to allocate proportions of a production to each of

⁶⁴ 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.

⁶⁵ See paragraphs 7 and 8 of the current [Guidance](#) for more detail about the allocations process.

the different areas where a programme is made, as an alternative and more accurate approach, but it also recognised this could be overly onerous for producers.⁶⁶ Similarly, Tern suggested that allocating the actual spend in the nations and regions would be a more accurate reflection of the economic benefits, but it also recognised how complex the reporting would be.⁶⁷

- A6.44 STV raised concerns that productions allocated as ‘multi-nation/region’ are not sufficiently transparent, as the locations counted are not reported. Instead of the current process it suggested that these productions should be allocated according to where the majority of the spend criterion was met.⁶⁸
- A6.45 The BBC also argued that ‘multi-nation/region’ productions should be allocated according to where most of the production spend has occurred. The BBC explained that under the current regime, productions can be made in the English regions, but not assigned to a specific English macro-region because the spend falls across multiple English regions. This has become a more pressing issue since Ofcom introduced a specific English regions quota for the BBC. As such the BBC suggested that the production spend on these productions determine which area they get allocated to.⁶⁹

Suggestions for change: allocating titles

Stakeholder suggestions	Ofcom’s response
<p>26. Remove ‘multi-nation/region’ productions and allocate these productions according to where the majority of the spend criterion was met.</p>	<p>Our view is 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 can count all relevant titles towards their nation’s quotas.</p> <p>We do not propose to adopt a different approach to allocations in these specific circumstances, but instead propose to extend our existing approach by introducing two new allocation categories to sit alongside ‘multi-nation/region’. These are ‘Multi-English region’ and ‘Multi-nation outside England’. This approach is consistent with all other allocations and will, we believe, more accurately reflect where and how the productions were made without introducing a further level of complexity to the allocations process.</p> <p>See paragraphs 5.50 to 5.56 in Section 5 for more information about how these categories should be applied, and paragraph 11 in Annex 7⁷⁰ for a table of worked examples of how titles should be allocated.</p>

⁶⁶ [STV response to the Ofcom Call for Evidence p.12](#)
⁶⁷ [Tern response to the Ofcom Call for Evidence p.11](#)
⁶⁸ [STV response to the Ofcom Call for Evidence p.13](#)
⁶⁹ [BBC response to the Ofcom Call for Evidence p.11](#)
⁷⁰ [Annex 7 – Proposed new Guidance and explanatory notes](#)

Compliance Processes and Enforcement

- A6.46 Issues relating to the current compliance and enforcement processes were also raised by respondents. Comments centered on: the data that the PSBs collect and report to Ofcom; Ofcom publications; where responsibility for meeting the criteria lies and how complaints are dealt with. There was a general sense that more could be done in these areas to bring greater rigour and transparency to the regime and improve stakeholder's confidence in the system.
- A6.47 There were suggestions that Ofcom should collect and publish more detailed data from the PSBs. The BBC⁷¹ and the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee⁷² among others suggested that this would improve transparency and boost the sector's confidence in the regime. Other stakeholders specified examples of the data they thought we should publish, such as the running time of a title, the number of episodes and genre, as well as the production company's registered address and the percentage of the production or talent spend claimed as out of London.
- A6.48 Pact made a range of suggestions about how we could improve the transparency of data reporting. This included ensuring reporting by the broadcasters is consistent and standardised and that Ofcom's publications are clear and consistent. They also suggested the Made Outside London Register should include: information on hours and spend; and enhanced analysis of the data, including covering trends for the year and over time.⁷³ STV also suggested that we include details on how the substantive base has been established to improve the transparency of our reporting.⁷⁴
- A6.49 ITV raised concerns about the additional burden any increase in reporting requirements would have on regional productions. It argued that any additional requirements that make regional productions more difficult or expensive would place a material additional burden on those producers and disadvantage them versus their London competitors.⁷⁵
- A6.50 There were some comments made about the timings of the publication of the Register. Tern suggested that to prevent any abuse of the system, stakeholders should be able to respond quickly and check the authenticity of the regional productions, so it would help if the Register was published closer to the time the productions are broadcast.⁷⁶
- A6.51 A number of stakeholders suggested Ofcom should introduce an auditing process, to check the PSBs' compliance, to bring greater rigour and accountability to the system and to help improve its credibility. The Scottish Government recommended Ofcom take a more proactive role in auditing regional productions to check the Guidance is being adhered to,

⁷¹ [BBC response to the Ofcom Call for Evidence](#) p.10

⁷² [Scottish Parliament: Culture, Tourism, Europe and External Affairs Committee response to the Ofcom Call for Evidence](#) pp.2-3

⁷³ [PACT response to the Ofcom Call for Evidence](#) pp.16-17

⁷⁴ [STV response to the Ofcom Call for Evidence](#) p. 15

⁷⁵ [ITV response to the Ofcom Call for Evidence](#) p.13

⁷⁶ [Tern response to the Ofcom Call for Evidence](#) p.12

rather than relying on complaints.⁷⁷ BECTU felt that Ofcom should ‘spot check’ a sample of regional productions each year.⁷⁸

- A6.52 Responses suggested some confusion over whether it is the responsibility of PSBs or production companies for ensuring that regional productions are meeting the criteria and adhering to the Guidance. The Indie Club explained that the responsibility often falls between both, with neither taking full accountability.⁷⁹
- A6.53 It was clear that stakeholders would value a more transparent, timely complaints process. Pact proposed that Ofcom clarifies its process, setting out how complaints will be handled, and the timescales involved.⁸⁰

Suggestions for change: compliance processes and enforcement

Stakeholder suggestions	Ofcom’s response
27. Increase the level of data Ofcom collects from the PSBs.	<p>We have already asked PSB’s to start collecting more data on how regional productions have met the criteria. This will include the postal address of the substantive base, where the talent and spend criteria are allocated and the percentage of relevant budget that was met there. Some of this data will be collected and reported to Ofcom for regional production titles broadcast from July 2018 onwards. The complete data set will be collected and reported to Ofcom for all MOL titles broadcast from January 2019 onwards.</p> <p>This consultation includes a proposal to require the PSBs to also supply data on the year of establishment for production companies which meet the substantive base criterion.</p> <p>The changes detailed above have resource implications for producers, the PSBs, and Ofcom, but based on the evidence we have received and our own experiences we believe this proposal is both necessary and proportionate. It should encourage greater diligence on the part of producers in applying Guidance, greater scrutiny of the application of the guidance by the PSBs and will also increase regulatory oversight of regional productions. For more detail on these proposals please refer to Section 5, paragraphs 5.69 to 5.72.</p>
28. Publish more of the data we collect from the PSBs.	<p>We plan to increase the range and volume of data we publish. We will provide this data in a single interactive digital publication, so stakeholders can interrogate and explore the data themselves. Section 5 paragraphs 5.73 to 5.75 provides more detail on what we plan to do, and Annex 8⁸¹ includes an example of the new interactive Register.</p>

⁷⁷ [Scottish Government response to the Ofcom Call for Evidence](#) p.2

⁷⁸ [Regional Production Division of BECTU response to the Ofcom Call for Evidence](#) pp.6-7

⁷⁹ [The Indie Club response to the Ofcom Call for Evidence](#) p.30

⁸⁰ [PACT response to the Ofcom Call for Evidence](#) p.18

⁸¹ [Annex 8 – Example of interactive titles Register](#)

<p>29. Provide more timely data in the publication of the Register.</p>	<p>The quotas are based on annual performance. PSBs must be afforded time to deliver full year data after the year end. We do not consider reporting on the PSBs’ performance more frequently than once a year practical, so we are not currently minded to make this change. We plan to publish the Register, alongside the PSB annual compliance report in early summer 2019.</p>
<p>30. Introduce an auditing process.</p>	<p>To help ensure application of the Guidance is consistent we are proposing to conduct ad hoc spot checks on regional productions. These would take the form of requests for additional information about specific titles to assess their credentials. We have outlined this proposal in more detail in Section 5, paragraphs 5.76 and 5.77. We believe this will add rigour to the regime and increase accountability throughout the production chain.</p>
<p>31. Clarify who is responsible for compliance.</p>	<p>We have made clear in the review that the PSBs have licence obligations to fulfil the regional production quotas and have regard to the Guidance. Compliance with these obligations is their responsibility.</p> <p>We recognise that in many cases the PSBs are reliant on the provision of information from third parties. However, the PSBs need to be satisfied that the productions they are attributing to these quotas meet the definition of a regional production. For further information on our expectations please refer to paragraphs 5.66 to 5.68 in Section 5.</p> <p>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.</p>
<p>32. Establish a clear complaints process.</p>	<p>We agree that there is a need for a clear complaints process to be included within the Guidance.</p> <p>We plan to add an explanation of the existing complaints process into the Guidance, to provide stakeholders with a clear route for raising any compliance concerns and set out how we will report on outcomes of any complaints. More information on this proposal can be found in Section 5, paragraph 5.78.</p>

Regional Programming

A6.54 In the CFE we made clear that the focus of the review would be weighted towards regional production as this appeared to be where most sector changes and stakeholder observations were generated. The CFE responses corroborated this view. We received little feedback on regional programming, indicating any problems. Several stakeholders, including the BBC, ITV and Ofcom Advisory Committee for Wales noted no desire or need to amend this element of the Guidance.

- A6.55 Of those who did provide feedback on regional programming, Directors UK suggested that Ofcom introduce a fourth criterion to help ensure that creative leads on regional programming productions are from the local area. It argued regional programmes should mostly be made by local production companies and talent based in the area that the programmes are created to serve.⁸² The Campaign for Regional Broadcasting Midlands also suggested that regional programming should be made in the area, as well as budget requirements to help maintain quality.⁸³
- A6.56 Within the regional programming obligations there is the requirement for the production to *deal with subject matters of specific interest to the region and of less interest elsewhere*. STV questioned whether it is still appropriate to include “of less interest” in this requirement. It argued it is difficult to prove and it is not desirable for the increasingly globalised world in which we live. It also does not apply to STV as it can share non-news programming between STV Central and STV North.⁸⁴
- A6.57 Peter Arrowsmith commented on national stories, broadcast across multiple regions, being classified as regional programmes. As a result, he raised concerns about how we measure and report on regional programming as well as monitor and enforce against the PSBs obligations.⁸⁵

Suggestions for change: regional programming

Stakeholder suggestions	Ofcom’s response
33. Regional programming should be made in the area.	As set out in the PSB licence obligations a ‘suitable proportion’ of regional programmes should be made in the area where the service is provided. We recognise the financial pressures the PSBs face and that it is not practical for every regional programme to be made in the same area. For example, there will be times when there is a need for regions to co-commission a production. Based on the evidence we have received to date we do not propose to make any changes to this area.
34. Regional programming should have a budget requirement.	We received limited feedback on this topic and such changes could have significant financial impacts on the BBC and Channel 3. Given this, we do not currently consider it proportionate or appropriate to introduce budget constraints on regional programming.
35. Remove “of less interest” from the regional programming requirements.	Our current view is that “of less interest” remains an important characteristic of regional programmes. We agree that audiences are interested in information about alternative regions other than their locality, but we believe these topics will still be of ‘less’ interest to viewers who live outside the region. We, therefore, do not propose to act on this suggestion.

⁸² [Directors UK response to the Ofcom Call for Evidence](#) p.14

⁸³ [Campaign for Regional Broadcasting response to the Ofcom Call for Evidence](#) p. 12

⁸⁴ [STV response to the Ofcom Call for Evidence](#) p.14

⁸⁵ [Peter Arrowsmith response to the Ofcom Call for Evidence](#) p.5

36. Ensure regional programming is properly monitored.

Broadcasters are responsible for having regard to the Guidance and the definition of a regional programme. We do not monitor the specific content on individual programmes, but we do monitor audience perception in this area as part of our annual PSB research⁸⁶. Based on the evidence we have to date we do not consider it necessary to make any changes in this area.

⁸⁶ 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](#).