

A7. Proposed new Guidance and explanatory notes

- A7.1 This annex presents a draft version of the Guidance to show the changes proposed in this consultation. The words marked in underlined red text and highlighted (e.g. **example**) indicate the proposed insertions, while the words marked in strike-through and highlighted (e.g. ~~example~~) indicate the proposed deletions.
- A7.2 We have also included the proposed new explanatory notes which we plan to annex to the Guidance. As these notes are all new, the need to highlight these in any way does not apply.

Regional production and regional programme definitions: Guidance for public service broadcasters

1. Ofcom is obliged by **the BBC's Royal Charter and Framework Agreement and** section 263 of the Communications Act 2003 to include conditions in the licences of **the BBC and** the commercial public service broadcasters **respectively** to comply with obligations ~~as to~~ **on** independent production, regional production, original production, **and in some cases** regional programming. ~~There are similar obligations in the Agreement between the Government and the BBC ('the BBC Agreement'). In the guidance that follows, references to 'broadcasters' includes both~~ **means the BBC, Channel 3 services, Channel 4 and Channel 5** ~~licensees and the BBC.~~
2. This note supplements the statutory provisions and the licence conditions **on regional production and programming** by setting out the key definitions Ofcom has adopted, and explaining the approach Ofcom has taken towards interpreting the statutory obligations, and to monitoring compliance with them.
3. **The aim of the regional production obligations is to support and strengthen the television production sector and creative economies of the UK's nations and regions. The regional programming obligations also aim to help strengthen the television production sector in the nations and regions, while also ensuring that audiences have access to programmes which are relevant to them and about their local communities. The broadcasters should keep this in mind when having regard to the Guidance.**
4. The broadcaster is responsible for compliance **with its licence obligations**, and for the provision of data to demonstrate this **compliance** if required. Broadcasters are expected to supply monthly returns in a form agreed by Ofcom. ~~Ofcom does not expect the data supplied by licensees to be audited independently, but may require this if it considers it appropriate.~~

Regional production

5. The Communications Act (sections 286 and 288) and the BBC Agreement require that a suitable proportion of programmes are made outside the M25, that these constitute a suitable range of programmes, and that a suitable proportion of expenditure is spent on producing these programmes in a suitable range of production centres. ~~In the case of the licensed public service broadcasters, Ofcom has decided that the appropriate means of securing this objective is that the broadcasters licensees should be required to ensure that a specified proportion of the hours they transmit comprises first-run programmes that meet the definition of regional productions below. Ofcom has reached agreement with the BBC on a similar arrangement in respect of its Public Television Services.~~

6. In order to count towards the regional production quota by hours, relevant productions must meet two out of the following three criteria:

Criterion a): Substantive base

The production company must have a substantive business and production base in the UK outside the M25. **The production in question must be made from that substantive base. The A base should already be operational prior to the point of commission and** will be taken to be substantive if it is the usual place of employment of:

- i)** executives managing the regional business; **and**
- ii)** senior personnel involved in the production in question; and
- iii)** senior personnel involved in seeking programme commissions.

Aim: The objective of this criterion is to embed TV production in the nations and regions to achieve a degree of permanency that can stimulate and build viable production ecologies outside the M25. We consider that to satisfy this criterion, 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.

Criterion b): Production budget

At least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money, ~~and~~ copyright costs **and any production fee**) must be spent in the UK outside the M25. **For the purposes of this calculation, any funding from third parties should be included as part of the production budget.**

Aim: The objective of this criterion is to deliver genuine investment in TV production outside of the M25. We consider that to satisfy this criterion, a supplier should be making a significant financial contribution to the creative economy in the UK's nations and regions - for instance, through the use of local or regional production related facilities.

Criterion c): Off-screen talent

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.

Aim: The objective of this criterion is to ensure genuine creative job opportunities in TV production in the nations and regions. Attracting talent to those areas can in turn help to create strong regional production centres.

7. The same criteria would also determine whether a programme **counts** towards the expenditure quota, in which case the full **contribution to the** cost of the programme **from the relevant broadcaster** (excluding third-party funding) **will be counted towards the quota** ~~would count~~.

8. Each ex-M25 production must be assigned, in data returned to Ofcom, either to Scotland, Wales or Northern Ireland, or to one of three English macro-regions (**Northern England, Midlands and East, and Southern England**)¹. In deciding which nation or macro-region this should be, a two out of three majority of the criteria will apply **wherever possible**. ~~Broadcasters must apply the requirements contained in this paragraph with effect on transmissions by 1 January 2011 at the latest.~~

~~8. 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. As with para 7 above, the requirements in this paragraph must be implemented with effect on transmissions by 1 January 2011.~~

9. Where a qualifying production is made from a substantive base outside the M25, but either: meets all three of the criteria in different nations or macro-regions; meets only one of criteria b) or c) and meets this in a different nation or macro-region to the substantive base; or meets one or both of criteria b) and c) but in neither case is it fully met in only one nation or macro-region, the production should be allocated according to the substantive base.

10. In the event that a programme from a producer based within the M25 qualifies as a regional production in relation to only criteria b) and c) above, but there is no majority nation or macro-region to allocate the production to, the following categories will apply:

- **Multi-English region:** for titles that have either i) met each of criteria b) and c) fully, in two different English macro-regions; or ii) met both criteria b) and c) in a combination of English macro-regions, but not fully met the relevant 70% and 50% thresholds in any single English macro-region.
- **Multi-nation outside England:** for titles that have either i) met each of criteria b) and c) fully, in two different nations outside of England; or ii) met both criteria b) and c) in a

¹ Comprised of government regions Yorkshire and Humber, North-West and North-East England; West Midlands, East Midlands and East of England; and South-West and South-East England respectively

combination of different nations outside of England, but not fully met the relevant 70% and 50% thresholds in any single nation outside of England.

- **Multi-nation/region:** it is necessary to retain this category for titles that have either i) met each of criteria b) and c) 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 criteria b) and c) 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.

11. The following table provides some worked examples of how titles should be allocated

	a) Substantive Base	b) Production Budget	c) Off-screen talent	Allocation	Explanation
A	Scotland	Northern England	Northern England	Northern England	Two out of three majority applies
B	Not met	Northern Ireland	Northern Ireland	Northern Ireland	Two out of three majority applies
C	Wales	Wales	Multiple locations	Wales	Two out of three majority applies
D	Southern England	Wales	Midland & East	Southern England	No majority but meets criterion a). Therefore allocate according to a)
E	Scotland	Northern England	Not met	Scotland	No majority but meets criterion a). Therefore allocate according to a)
F	Midlands & East	Not met	Multiple locations	Midlands & East	No majority but meets criterion a). Therefore allocate according to a)
G	Not met	Southern England	Northern England	Multi-English region	No majority and does not meet criterion a). Allocate using one of the three multi-location categories based on where b) and c) were met.
H	Not met	Southern England	Multiple locations (in England)	Multi-English region	No majority and does not meet criterion a). Allocate using one of the three multi-location categories based on

	a) Substantive Base	b) Production Budget	c) Off-screen talent	Allocation	Explanation
					where b) and c) were met.
I	Not met	Scotland	Northern Ireland	Multi-nation outside England	No majority and does not meet criterion a). Allocate using one of the three multi-location categories based on where b) and c) were met.
J	Not met	Scotland	Multiple locations (outside England)	Multi-nation outside England	No majority and does not meet criterion a). Allocate using one of the three multi-location categories based on where b) and c) were met.
K	Not met	Wales	Midlands & East	Multi-nation/region	No majority and does not meet criterion a). Allocate using one of the three multi-location categories based on where b) and c) were met.
L	Not met	Southern England	Multiple locations (across the whole of the UK)	Multi-nation/region	No majority and does not meet criterion a). Allocate using one of the three multi-location categories based on where b) and c) were met.

12. The purposes of:

1. 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 continue 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;

2. excluding on-screen talent from the calculations is to ensure that the quotas remain focussed on regionally-based production expertise rather than more mobile on-screen talent and, importantly, to avoid the quotas being skewed by the significant cost of on-screen talent in some productions (including, but not limited to, drama productions); and
3. 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.

12. Ofcom accepts that it would be impractical to expect network news operations to be based outside London. News programmes are therefore excluded from the calculation. **Any self-promotional content is also excluded from the calculation.** As noted above only first-run programmes can be counted towards the regional production quota.

Regional programmes

This section applies only to the BBC and Channel 3.

13. Section 287 of the Act requires Channel 3 to provide a sufficient amount and a suitable range of regional programmes (including regional news). **Equivalent requirements apply to the BBC under the BBC Agreement.** Equivalent requirements apply to BBC1 and BBC2 taken together (including regional news on BBC1) under the BBC Agreement. Ofcom intends that 'sufficient amount' and 'suitable range' will be interpreted to mean the amount and range specified in licences or in the BBC's case achieved in 2002.

14. Ofcom is also required to ensure that the regulatory regime for **the BBC and** every Channel 3 service is appropriate to secure that what appears to Ofcom, in the case of the services, to be a suitable proportion of the regional programmes included in the service, consists of programmes made in the area for which the service is provided. For the purpose of determining whether a programme is made in the region, **the relevant broadcasters** licensees should follow the rules set out in paragraph 6.5 above, substituting 'in the region' for 'outside the M25'. **For** co-productions which **were not made in the relevant region** do not satisfy the criteria in paragraph 5, the proportion of the programme **that contributes to the quota** will be counted in accordance with the number of licensees involved.

15. In the case of regional news, if Ofcom is satisfied it is appropriate in the circumstances of a particular case it may, exceptionally, allow news programmes which would not otherwise satisfy the requirements set out in paragraph 6.5 above to classify as 'made in the region' providing it is satisfied that significant journalistic resources, including local news gathering resources and the presence of on the ground reporters and crews, are maintained throughout the relevant area and are involved in the production of the news programmes.

16. Regional programmes are those programmes which are of particular interest to people living in the area for which the service is provided. A key consideration in judging regionality will be what distinguishes individual programmes from the output of other regions and of the networks. In particular regional programmes should:

1. deal with subject matter of specific interest to the region and of less interest elsewhere (e.g. regional events, concerns and interests); and

2. be clearly set within the region and/or feature people known to be residents of, or who have close connections with, the region.

17. Co-productions between not more than three regional Channel 3 licensees (or BBC regional services) may count towards each licensee's regional quota. Co-productions between a Channel 3 regional licensee (or BBC regional service), and non-Channel 3 licensees or the BBC or ITV networks may also count, provided that the programmes receive their first transmission within the relevant region and that they satisfy the criteria in paragraph 16 14 above.

18. Programmes involving more than three parties which share a limited amount of content may be permitted at the discretion of Ofcom. Ofcom would not expect to exercise its discretion unless the amount of shared material was small in proportion to the total, and did not account for a significant proportion of regional programmes on any one regional service.

19. Ofcom anticipates that, in the normal course of events, co-productions will add to the quality and diversity of regional services, rather than simply being cost-cutting exercises. However, if it becomes apparent that this expectation is misplaced, Ofcom will consider further changes.

Complaints process

20. We will summarise for stakeholders our complaints process for regional productions and regional programmes and will publish this here in the final version of the Guidance when we publish the Guidance Review Statement.

Guidance Annex: Explanatory notes for regional production

These explanatory notes provide some examples to aid stakeholders in applying the criteria and address some specific questions stakeholders have raised with us about the wording.

Substantive base criterion

The production company must have a substantive business based in the UK outside the M25. The production in question must be made from that substantive base. The base should already be operational prior to the point of commission and will be taken to be substantive if it is the usual place of employment of:

- i) executives managing the regional business; and
- ii) senior personnel involved in the production in question; and
- iii) senior personnel involved in seeking programme commissions.

Q: How many individuals need to be employed to meet the criterion?

A: The number is likely to vary depending on each company's circumstances. As explained above it is dependent on what delivers a genuine operational production office in the locality in which it is based. For example, in a new start-up company it might be acceptable for one person to satisfy all elements of the criterion. However, in companies of scale, e.g. a larger, more established regional office of a London headquartered production company, it is more likely that we would expect the different elements of the criterion to be satisfied by a number of individuals.

Q: Does the substantive base need to be its own legal company to meet this criterion?

A: No.

Q: Which jobs can be counted as ‘executives’?

A: The term ‘executives’ is an acknowledgement that job titles vary between employers, by genre and over time. For these reasons, we do not consider it appropriate to provide a list of specific titles which can be counted as ‘executives’. Instead we define ‘executives’ as those individuals responsible for making executive decisions and/or having a significant leadership role in relation to the management of the regional business.

Q: Which jobs can be counted as ‘senior personnel’?

A: The term ‘senior personnel’ is an acknowledgement that job titles vary between employers, by genre and over time. For these reasons, we do not consider it appropriate to provide a list of specific titles which can be counted as ‘senior personnel’. Instead we define ‘senior personnel’ as those individuals who have a significant leadership role and/or are responsible for making executive decisions in relation to the production in question or in relation to seeking programme commissions (as applicable).

Q: Can a Special Purpose Vehicle (SPV)² be counted as a substantive base?

A: As with any other production, the key issue for a production made from an SPV is whether the SPV meets all of the elements of the substantive base criterion. If an SPV is temporary in nature, we tend to think that it is less likely that it would be able to meet all elements of the criterion, particularly the requirement that the substantive base is ‘the usual place of employment for senior personnel involved in seeking programme commissions’.

Q: What does “operational prior to the point of commission” mean?

A: We would expect a substantive base to be up and running with executives running the regional business and senior personnel seeking commissions from that base. It is likely that the company will have made programmes from that base previously; although we recognise that this may not always be the case for start-up companies.

There is no minimum period of establishment for a substantive base prior to commission as we recognise the fast pace of industry developments, but where the period is short we would expect producers and PSBs to be able to clearly demonstrate how the base is meeting all aspects of the criterion.

² A ‘Special Purpose Vehicle’ 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.

Production budget criterion

At least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money, copyright costs and any production fee) must be spent in the UK outside the M25. For the purposes of this calculation, any funding from third parties should be included as part of the production budget.

Production budgets are made up of a number of components. While we have already explicitly outlined certain costs that should be excluded for the purposes of this criterion, it may not always be clear whether other costs should count as regional spend or not, or which nation or region spend should be allocated to.

Q: How should costs associated with travel be allocated?

A: This depends on factors such as where the travel cost is incurred, the company the expenditure is going to, and what/who is being transported. The policy intent here should be considered; for example, it would not be appropriate to classify regional costs as those spent on transporting talent/equipment from London to and from the nations and regions. It would also not be appropriate to classify regional costs as those spent on transporting talent/equipment to and from countries outside the UK. It would however be appropriate for a production company to assign spend on *local* travel as regional (as long as it is incurred outside of the M25), for example, spend on local taxis and spend on transporting regionally based staff to a regional filming location.

Q: How should overhead costs be allocated?

A: If a production satisfies the substantive base criterion, it would be appropriate to classify the overhead costs associated with keeping that substantive base operational as regional spend. If the production does not satisfy the substantive base criterion, as the production is made by a London-based company, such costs should be classified as London-based expenditure. It may be more difficult to allocate these costs in circumstances where a production qualifies for substantive base, but the production company has multiple offices across the UK, and overhead costs are split between these offices (including possibly in London). In such cases, we would expect the company where possible to pro-rata the costs by location.

Q. How should spend abroad be allocated?

A: Spend outside of the UK should be allocated as part of the production budget but not as regional spend (i.e. it does not contribute to meeting the 70% threshold). However, it would be appropriate, for example, to count costs associated with paying regionally-based UK talent while working abroad on the production in question as regional.

Off-screen talent criterion

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.

Q: Does ‘production talent’ mean everyone on the payroll?

A: No. We recognise ‘production talent’ does not clearly differentiate between creative talent involved in a production and roles that also exist outside of a TV production e.g. drivers, cleaners, catering staff. We consider the use of the word talent here to denote creative roles. We would therefore expect production companies to only assign as regional spend the costs of talent generally recognised as part of the creative programme making process. In some instances, creative talent and peripheral roles may not always be easy to differentiate between, and so companies should use their judgement, keeping in mind the policy intent.

Q: Would freelance talent hired through a studio or service company based outside of the M25 satisfy the criterion?

A: Regardless of where a studio or service company is based, the criterion specifies that freelance talent must live outside of the M25.