

# A1. Updated Guidance

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

### Introduction

**This Guidance was updated in June 2019. It comes into effect with regards to titles broadcast from 1 January 2021.<sup>1</sup> Ofcom expects broadcasters to work within the spirit of the updated Guidance at all times, including when commissioning new programmes during the transitional period. Where programmes are re-commissioned during the transitional period, Ofcom expects these to be made in line with the updated Guidance.**

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 on independent production, regional production, original production, and in some cases regional programming. In the guidance that follows, 'broadcasters' means the BBC, Channel 3 services, Channel 4 and Channel 5.
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 to 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 the areas in which they live. 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 yearly returns in a form agreed by Ofcom.

### Regional production

5. The Communications Act (sections 286 and 288) and the BBC Framework Agreement require that a suitable proportion of programmes are made outside the M25, that these constitute a suitable

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<sup>1</sup> Where titles broadcast from 1 January 2021 were commissioned prior to 1 July 2019, the previous Guidance "[Regional production and regional programme definitions: Guidance for public service broadcasters](#)" dated 6 January 2010 applies.

range of programmes, and that a suitable proportion of expenditure is spent on producing these programmes in a suitable range of production centres. Ofcom has decided that the appropriate means of securing this objective is that the broadcasters 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.

6. The regional production quotas only apply to first-run programmes made within the UK<sup>2</sup>. Ofcom accepts that it would be impractical to expect network news operations to be based outside London. The quotas therefore do not apply to news programmes and these should be excluded from the quota calculations. The quotas also do not apply to self-promotional content or acquisitions, and these should also be excluded from the quota calculations.

7. 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 managed from that substantive base. The base 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 permanence 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.*

**Notes:**

- *The substantive base will usually be, but does not need to be, its own legal entity.*
- *There is no minimum number of individuals who need to be employed at the substantive base; the number will be 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, including a newly opened regional office of a London headquartered production company, one person may initially be responsible for all the roles set out above and therefore 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. Where roles and personnel change over time, we would expect broadcasters to assess whether the base remains substantive in line with this criterion.*
- *The generic terms 'executives' and 'senior personnel' are an acknowledgement that job titles vary between employers, by genre and over time. We define 'executives' as those*

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<sup>2</sup> A programme which is made outside of the UK is excluded from the regional production quotas: see Annex 1 of this Guidance.

*individuals responsible for making independent, executive decisions and/or having a significant leadership role in relation to the management of the regional business. We define 'senior personnel' as those individuals who have a significant leadership role and/or are responsible for making independent, executive decisions in relation to the production in question or in relation to seeking programme commissions (as applicable).*

- *Usual place of employment is the place where the individual spends the majority of their working time.*
- *For productions made from a Special Purpose Vehicle ('SPV')<sup>3</sup>, the key consideration 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'.*

#### **Criterion b): Production spend**

At least 70% of the production spend must be spent in the UK outside the M25. For the purposes of this calculation, production spend should be based on the entire production expenditure, including any funding from third parties and spend outside the UK, but should exclude the cost of on-screen talent, archive material, sports rights, competition prize-money, copyright costs and any production fee.

*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 production should be making a significant financial contribution to the local economy in the UK's nations and regions - for instance, through the use of local or regional production related facilities.*

#### **Notes:**

- *Overhead costs should be reasonably apportioned to the location(s) to which each overhead relates (which might be the substantive base and/or one or more production bases). It would be appropriate to classify the running costs associated with keeping a base in the nations and regions operational as regional spend. In circumstances where a production company has multiple offices across the UK, and such costs are split between these offices (including in London), we would expect the company to take a reasonable approach to allocating these costs. Costs associated with the operation and maintenance of London premises should not be counted as regional expenditure.*
- *When allocating costs in relation to travel, the policy intent should be considered. For example, it would not be appropriate to classify regional costs as those spent on transporting talent/equipment from London/countries outside the UK to the nations and regions. However, expenditure on travel can be allocated as regional spend if the starting point is in the nations and regions.*
- *The production fee should be excluded from the production spend. However, in cases where some of the production fee is used to fund the costs of the production (for example,*

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<sup>3</sup> An SPV is a company set up for a specific project, e.g. to produce a film/programme. Commonly used for big productions, particularly drama. The 'vehicle' keeps the production separate from the production company's other activities.

where a production has exceeded its budget), then that amount can be included in the production spend.

- Spend outside of the UK should be included as part of the production spend but not counted as regional spend (i.e. it does not contribute towards 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.

#### **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 across varying levels of seniority in TV production in the nations and regions. Attracting talent to those areas can in turn help to create strong regional production centres.*

#### **Notes:**

- By 'production talent' we mean those recognised as being directly involved in the production of the programme. Peripheral roles such as drivers, cleaners and catering staff should not be included. In some instances, it may not always be easy to differentiate between these different types of roles, and so judgement should be exercised in this regard, keeping in mind the policy intent.
- Regardless of whether freelance talent are hired through a studio or service company which is based outside the M25, they will only count as regional talent if they live outside the M25.
- Usual place of employment is the place where the individual spends the majority of their working time.
- On-screen talent is an important part of the regional production landscape and the PSBs should consider how best to offer opportunities to on-screen talent in the nations and regions. However, it is excluded from this criterion to ensure that the quotas remain focused on regionally-based production expertise and, importantly, to avoid the quotas being skewed by the significant cost of onscreen talent in some productions (including, but not limited to, drama productions).

8. The same three criteria would also determine whether a programme counts towards the broadcaster's expenditure quota, in which case the full contribution to the cost of the programme from the relevant broadcaster will be counted towards its quota. When determining their delivery against the expenditure quotas, the broadcasters should only be basing this on their own expenditure, and as such third-party funding should be excluded for such calculations.

### **Allocating regional production titles**

9. Each regional production must be assigned, in data returned to Ofcom, either to:

- One of: Scotland, Wales or Northern Ireland; or
- One of three English macro-regions (Northern England, Midlands and East, and Southern England)<sup>4</sup>; or
- Multi-English region; or
- Multi-nation outside England; or
- Multi-nation/English region.

In deciding which nation or macro-region this should be, a two out of three majority of the criteria will apply wherever possible.

10. Where a qualifying production is made from a substantive base outside the M25, it should be allocated according to that substantive base in the following instances. The production:

- meets all three of the criteria in different nations or macro-regions; or
- 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.

11. 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 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/English region:** 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.

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

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<sup>4</sup> 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

	a) Substantive Base	b) Production Budget	c) Off-screen talent	Allocation	Explanation
A	Scotland	Northern England	Northern England	<b>Northern England</b>	Two out of three majority applies
B	Not met	Northern Ireland	Northern Ireland	<b>Northern Ireland</b>	Two out of three majority applies
C	Wales	Wales	Multiple locations	<b>Wales</b>	Two out of three majority applies
D	Southern England	Wales	Midland & East	<b>Southern England</b>	No majority but meets criterion a). Therefore allocate according to a)
E	Scotland	Northern England	Not met	<b>Scotland</b>	No majority but meets criterion a). Therefore allocate according to a)
F	Midlands & East	Not met	Multiple locations	<b>Midlands &amp; East</b>	No majority but meets criterion a). Therefore allocate according to a)
G	Not met	Southern England	Northern England	<b>Multi-English region</b>	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)	<b>Multi-English region</b>	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.
I	Not met	Scotland	Northern Ireland	<b>Multi-nation outside England</b>	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.

	a) Substantive Base	b) Production Budget	c) Off-screen talent	Allocation	Explanation
J	Not met	Scotland	Multiple locations (outside England)	<b>Multi-nation outside England</b>	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	<b>Multi-nation/ English region</b>	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)	<b>Multi-nation/ English region</b>	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.

## 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 Framework Agreement. Ofcom intends that 'sufficient amount' and 'suitable range' will be interpreted to mean the amount and range specified in licences.

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 should follow the rules set out in paragraph 7 above, substituting 'in the region' for 'outside the M25'. For co-productions which were not made in the relevant region, 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 7 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 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. Ofcom has published procedures for investigating breaches of broadcast licences.<sup>5</sup> These apply to a number of regulatory requirements placed on broadcasters, including requirements to fulfil production and programming quotas, and set out the steps Ofcom will usually follow in order to investigate whether there has been a breach of a relevant requirement. Stakeholders should refer to these procedures if they wish to make a complaint.<sup>6</sup>

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<sup>5</sup> [General procedures for investigating breaches of broadcast licences](#) (Ofcom, 2017). There are separate procedures for matters related to the BBC – [Procedures for enforcement of requirements in the BBC Framework Agreement and compliance with Ofcom enforcement action](#) (Ofcom, 2017).

<sup>6</sup> Ofcom's Broadcast and On Demand Bulletin reports on the outcome of investigations into potential breaches of Ofcom's code and rules for TV, radio and video-on-demand programmes, as well as the licence conditions with which broadcasters regulated by Ofcom are required to comply: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>.



21. Individuals who wish to make a complaint about a title submitted by the BBC should note that the principle of 'BBC First' applies, although we are able to consider complaints first under exceptional circumstances.<sup>7</sup>

22. We will consider requests for complainants to remain anonymous on a case by case basis. Stakeholders should note that Ofcom has published separate guidance which offers advice for whistleblowers.<sup>8</sup>

23. Anyone who wishes to make a complaint in relation to the broadcasters' fulfilment of their regional production or regional programming obligations should fill out a complaint form on the Ofcom website. There are separate forms for complainants who wish to make a complaint about the BBC's delivery of its regional production or programming obligations, and those who wish to make a complaint about one of the commercial PSB channels (ITV, STV, Channel 4 or Channel 5) delivery of its regional production or programming obligations. The forms can be found on the Ofcom website [here](#).

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<sup>7</sup> Ofcom will normally consider a complaint only after the complaint has been in the first instance resolved by the BBC. See the [BBC Charter](#) (Section 56 (3)) and [BBC Framework Agreement](#) (Section 56 (4)(a)).

<sup>8</sup> See Section 3. [https://www.ofcom.org.uk/data/assets/pdf\\_file/0013/102514/Advice-for-complainants.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0013/102514/Advice-for-complainants.pdf)

## **Guidance Annex 1: International productions**

A1. A programme is considered as made outside of the UK, and therefore is excluded from the regional production quotas, where it meets at least two out of the following three criteria:

A1.1: Production location (i.e. the location of the base actually managing the production) is not in the UK;

A1.2: More than 50% of the budget (excluding on-screen talent, archive material and copyright/sports right costs) is spent outside the UK; and

A1.3: More than 50% of the talent (excluding on-screen talent) are usually employed outside the UK.