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Regional production and regional programme definitions

Guidance for public service broadcasters

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1. Ofcom is obliged by section 263 of the Communications Act 2003 to include conditions in the licences of commercial public service broadcasters to comply with obligations as to independent production, regional production, original production, and 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 licensees and the BBC.
2. This note supplements the statutory provisions and the licence conditions 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 broadcaster is responsible for compliance, and for the provision of data to demonstrate this 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

4. 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 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.
5. In order to count towards the regional production quota by hours, relevant productions must meet two out of the following three criteria:
 1. the production company must have a substantive business and production based 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;
 2. 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; and
 3. 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.

6. The same criteria would also determine whether a programme counted towards the expenditure quota, in which case the full cost of the programme (excluding third-party funding) would count.

7. 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 (comprised of 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). In deciding which nation or macro-region this should be, a two out of three majority of the criteria will apply. 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 meet 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. 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 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.

10. 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. As noted above only first-run programmes can be counted towards the regional production quota.

Regional programmes

11. 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 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.

12. Ofcom is also required to ensure that the regulatory regime for every Channel 3 service is appropriate to secure that what appears to Ofcom, in the case of the service, 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, licensees should follow the rules set out in paragraph 5 above, substituting 'in the region' for 'outside the M25'. In the case of co-productions which do not satisfy the criteria in paragraph 5, the proportion of the programme will be counted in accordance with the number of licensees involved.

13. 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 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.

14. 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.

15. 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 14 above.

16. 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.

17. 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.