

**Review of Regional TV Production and Programming Guidance
Response to Consultation from
Ofcom's Advisory Committee Northern Ireland
25 February 2019**

A. Introduction and overview

The Advisory Committee for Northern Ireland (ACNI) responded to Ofcom's initial consultation on Regional TV Production and Programming Guidance in May 2018.¹ In December 2018 Ofcom published its proposed changes to the Guidance and this is ACNI's response to the suggested revisions.

We very much welcome the marked growth in the volume, range and spend of programmes made in NI for the Public Service Broadcasting (PSB) networks since 'Made Out of London' obligations were introduced. There is, however, more work to be done to grow the sustainability of the local production ecology, to contribute to NI's creative economy and nurture its talent, as well as to contribute to a wider and more authentic portrayal of its diverse communities in programmes broadcast across the UK. We believe that the Made Out of London obligations continue to play an essential role in furthering these aims.

We have considered the regional production obligations placed on PSBs and believe they remain broadly appropriate. However, we also believe that further stretch should be considered in the future as capacity outside London grows and recent developments in PSB strategies bed in. At this stage, the focus should be on ensuring that the obligations are applied more rigorously and consistently so that the intended benefits are fully realised. We therefore welcome improved clarity and some closely targeted tightening of the Guidance. We recognise that any growth in the obligations has to be carefully balanced against the need for flexibility in order to relate to a range of circumstances in a fast changing marketplace.

We share the concerns of some stakeholders that the Guidance has not always been applied in the spirit of its policy intent, for instance through 'brass plating' and 'pop up' production offices, which undermines trust and collaboration as well as having a detrimental impact on the intended outcomes. We therefore warmly welcome proposals for tighter guidance in this regard. We also agree with Ofcom's proposals for more rigorous monitoring and compliance, through enhanced reporting and a more prominent complaints process.

There are a number of areas which fall outside the scope of the Guidance but are relevant to Ofcom's wider role in monitoring PSBs and developments in the market:

(i) **Spend in NI:** We note concerns that a significant proportion of regional production spend in NI flows quickly back to London. This is difficult to define and measure, but there are models used by the British Film Institute and NI Screen which may help provide more insight into lasting economic contribution.

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0017/114254/Advisory-Committee-for-Northern-Ireland.pdf

(ii) **Lift and shift:** The practice of 'lift and shift' of London based programmes into the nations and regions does not appear to be having as much impact on growing skills and capacity as intended, and indeed may in the long run have a detrimental impact by taking the place in quotas of productions which could contribute more fully to these aims. We would like Ofcom to work to understand how this practice contributes to the policy aims, with a view to a change to the obligations or other actions if appropriate.

(iii) **Production bases:** The increase in PSB production bases and hubs in other parts of the UK may focus commissioning efforts there and make it more difficult for NI to win Out of London commissions. Broadcasters commissioning strategies – such as the BBC's partnership with NI Screen and All 4 The UK - play a crucial role in creating the best environment for further development, taking into account commissioning culture and the sort of contribution and support appropriate to a smaller ecology like that in NI. We would like Ofcom to be particularly mindful of this when reviewing PSB's Annual Statements of Programme Policy as well as their performance against their remits and obligations.

We note that this is a fast evolving marketplace which Ofcom will need to continue to monitor to ensure that its interventions remain appropriate and have the intended impact. We welcome the proposal of a survey of PSBs and producers to gather views of how the arrangements work in practice and will be interested to understand more about the findings and application of this feedback in due course.

This review also relates to local programmes made primarily for audiences in a specific region. We consider that arrangements for locally produced programmes work well in NI and we agree that there is little evidence of a need to change them. We agree with Ofcom that local programmes should continue to be defined as programmes which are of particular interest to the region *and of less interest elsewhere*. This will help to ensure that programmes made for NI audiences retain their distinctiveness and are not commissioned only if they will also have wider appeal across the UK.

We note, however, that expenditure of PSBs on regional programmes – including those for a NI audience - has reduced very significantly in recent years. Whilst we welcome more efficient production processes we also want to be assured that the range of programmes made specifically for a NI audience is retained and continues to meet the diverse interests and needs of the local audience.

B. Response to consultation questions

1. Do you agree with our proposed change to articulate the intention of the regional production obligations at the start of the Guidance?

Yes, ACNI agrees that the policy intent should be given this primacy, particularly in light of the degree of flexibility provided in the Guidance and some evidence of its flawed application. Broadcasters and producers should be in no doubt that the Guidance should be applied in this spirit and that this will inform compliance monitoring.

2. Do you agree with our proposed changes to the substantive base criterion?

Yes. The regional production obligations have been created to have a positive and sustained impact on local production ecologies and creative economies. However, instances of 'brass plating' and 'pop up' offices have undermined trust in the regime and reduced its impact. This must be dealt with decisively in the revised Guidance. We therefore agree with the proposal to require substantive bases to be operational prior to the point of a qualifying commission. Whilst this is very much in line with the intent of the current guidance which requires the base to be 'seeking commissions', it helpfully reduces any perceived 'wiggle room'.

We note the possibility, identified in the consultation document, that this change could discourage new bases from being established from the point of a qualifying commission. However, we think that this is the right approach, on balance, because it will help factor out those newly established bases that turn out to be transitory, and because there is still an opportunity to qualify under the other two criteria.

We agree that the date that the base was established should be included in reporting, and this will not add significantly to the burden on broadcasters.

We also agree that the Guidance should be tightened as proposed to make it absolutely clear that the production in question must be made from the substantive base and that all elements of the criterion must be met. This reflects how the Guidance was intended to be interpreted and we agree that any detrimental impacts to stakeholders are likely to be the result of previously flawed application of the Guidance.

3. Do you agree with the suggested explanatory notes for the substantive base criterion?

We agree that the proposed explanatory notes are helpful in that they provide clearer practical guidance on how the criterion should be applied whilst retaining the necessary level of flexibility for the wide range of circumstances. For example, we think it helpful to suggest that a substantive base will normally have made programmes but that this may not be the case for a fledgling or start-up company.

4. Do you agree with our proposed changes to the production budget criterion?

Yes. ACNI considers that keeping the requirement at 70% of production budget is appropriate at this stage, and provides a good balance of challenge and flexibility to producers in order to promote further growth in regional production. However, as with all targets, this should be kept under review with the aim of providing a more stretching regime to encourage sustainable production ecologies outside London.

It is vital that there is clarity and consistency around how this criterion is calculated, and we welcome the proposed changes in this regard. We agree wholeheartedly that the

calculation should be based on the entire production budget and not just the PSB contribution. The criterion should relate as closely as possible to the outcomes and impact it is intended to leverage – in this case the economic impact of the production – rather than the processes and structures involved which, in any case, are subject to changes in the market and can be difficult to measure.

We remain very alert to concerns that much of the production budget considered to be spent in NI flows back to London and ask how this might be best tackled, given difficulties in measuring this.

We suggest that the proposed improvements in guidance, along with improved reporting and a more prominent complaints process, will be of some benefit in setting and monitoring clearer standards. It will, however, ultimately be for PSBs, working with the companies they commission, to demonstrate how they are fulfilling the spirit of the Made Out of London arrangements. This should become a particular focus of the annual review process for each PSB.

5. Do you agree with the suggested explanatory notes to the production budget criterion?

We agree with the principles underpinning the explanatory notes and expect Ofcom to take into account any further evidence from stakeholders with regard to unintended consequences.

6. Do you agree that the off screen talent criterion should remain the same?

Yes, subject to the proposed changes in the explanatory notes.

7. Do you agree with the suggested explanatory notes for the off-screen talent criterion?

Yes. We especially welcome guidance that freelancers' location would be decided by where they live rather than the location of the studio that they are hired through. This is likely to give a better indication of where production talent is truly located and where the economic benefit is felt.

We appreciate why some stakeholders also want to exclude freelancers who live outside the M25 from the definition of production talent when they are working on a qualifying production in London. However, on balance we think that, at this time, the production talent base outside the M25 is still partly sustained by access to opportunities in London that might not exist without the regional production obligations. We would see this as an area where tighter restrictions should be possible over the next few years, if the strengthening and clarity of the obligations has the desired effect of growing capacity in the nations and regions.

8. Do you agree with our proposed change to exclude self-promotional content from the calculations?

Yes. ACNI believes that it was not appropriate for self-promotional content to be included in the calculations and this should be corrected. All content that is self-promotional or without significant audience impact, such as overnight/closedown content, should be excluded as this does not contribute in any substantive way to the intended aims of the regional production obligations.

9. Do you agree with the proposed changes to the allocation categories?

Yes. Refined guidance on multi/nations/regions allocation will help to relate the allocation more closely to the place which has received most benefit, which fits with the policy intent.

10. Have you views on any adverse consequences we have not identified

We welcome Ofcom's focus on identifying and taking account of unintended adverse consequences, especially given the fast changing nature of the market and the variations across different parts of the UK and different genres.

We believe that the focus on clarifying the intentions of the arrangements, to build awareness and support, along with improved transparency and a practical and prominent route for making complaints is essential. Should this consultation identify further issues we expect the full range of mitigations, including regulatory changes, to be given due consideration.

11. Do you agree with our proposal for the new guidance and majority of changes to take effect from January 2020?

ACNI would like the new guidance to come into effect as soon as is practically possible, and certainly no later than January 2020, noting that it is a finessing of the current regime rather than a major change. We recognise that there needs to be some lead in time from the close of the consultation for PSBs and production companies to fully take account of the changes and ensure there are no inconsistencies in reporting. We welcome efforts to prepare for and take forward some changes sooner where possible, for example in PSBs' recent updating of guidance to their producers.

**Advisory Committee for Northern Ireland
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