

## Response from the Advisory Committee for Scotland (ACS) to Ofcom’s “Review of Regional TV Production and Programming Guidance”

*‘The Advisory Committee for Scotland (ACS) advises Ofcom about the interests and opinions, in relation to communications matters, of persons living in Scotland.’*

The response from the ACS to this consultation draws on the knowledge and expertise of ACS members and is informed by our individual experience and through discussion at our meetings. It does not represent the views of Ofcom or its staff.

### **Introduction**

The ACS welcomes this Review of Regional TV Production & Programming Guidance, which reflects the positive impact of revised spend targets and quotas introduced in 2008 & 2010 on the independent production sector as a whole, and particularly as it relates to Scotland.

The ACS considers the proposed changes to the guidance as a significant step towards addressing concerns about criteria, clarity, reporting, monitoring and compliance. We welcome the strengthening of policy objectives, plus the efforts to make the definitions relating to the criteria more clear. We particularly welcome Ofcom’s acknowledgement that *“more progress can be made to support the development of independent, end-to-end production ecologies in the nations and regions”* and Ofcom’s commitment to *“consider whether further regulation is necessary....if not enough progress is being made in this area.”*<sup>1</sup>

### **Background**

In the Scottish production ecology, it is essential that small/medium Scottish based production companies are given the necessary stability for them to flourish as independents in a global content world and that Scottish skills and talent bases are enabled to grow, particularly in relation to more senior, mid-career roles, such as Series Producers, Editors and Directors. A *“viable production economy”* must mean creating an environment where productions are completed end-to-end in Scotland. This is particularly relevant moving forward with:

- The creation in August 2018 of the dedicated partnership, **Screen Scotland**, under the auspices of Creative Scotland. Screen Scotland has £5 million in its Production Growth Fund and its Broadcast Content Fund to support TV & Film production in Scotland
- The opening of the **National Film & TV School Scotland** in Glasgow in Spring 2018
- The launch of the **new BBC Scotland channel** on 24/2/2019 with a budget of £32 million (with the simultaneous announcement of a new formal agreement between **BBC Scotland** and **Screen Scotland** to support “world-class drama, cutting-edge comedy and high-end factual content”<sup>2</sup>).
- Glasgow being named as one of Channel 4’s two new **Creative Hubs**

These are all positive indicators. On the negative side, despite the new BBC Scotland channel, licence fee income raised in Scotland is still not being spent here (the BBC itself acknowledges

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/130911/Review-of-Regional-TV-Production-and-Programming-Guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/130911/Review-of-Regional-TV-Production-and-Programming-Guidance.pdf)

<sup>2</sup> <https://www.screen.scot/news/2019/02/bbc-and-screen-scotland-join-forces-to-put-scotlands-tv-industry-on-world-stage>

that even with the new channel, the proportion of licence fee income spent will still only be 80% by 2021, up from 69% in 2017/18).<sup>3</sup>

Until London commissioners can be persuaded that the talent in the nations and regions has the same level of experience and success as their London counterparts, Ofcom will fail in its objective of developing “*independent, end-to-end production ecologies in the nations*”. In other words, there have to be enough commissions for companies based outside of the M25, rather than larger London companies, including the so-called “super-Indies”, seeking to subvert the stated intention of the guidelines.

The ACS therefore welcomes Ofcom’s proposal to conduct an industry survey on nations and regions talent and resources, including post-production facilities. The ACS thinks that a part of this survey should also include an assessment of the accountability and delivery of BBC Studios as a commercial entity since its inception, particularly with regard to the threat it presents to the independent sector. And the ACS also welcomes Ofcom’s plan to conduct a survey of the PSBs to better understand how commissioning staff and key decision makers are located around the UK.

### **The Proposed Guidance**

The ACS welcomes the stated objective 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.*” The key question for the ACS remains as to whether these new guidelines are now sufficiently “tight” to significantly benefit locally based companies?

### **The “Definitions”**

#### **1. “Substantive Base” / “Usual place of employment”**

The ACS welcomes the significant rewording that Ofcom is proposing in relation to the definition of a “substantive base”, including that the base must be operational prior to the point of commission.

However, as Ofcom are aware, defining what is a “substantive base” has been a constant cause of concern (and abuse) in Scotland. For this reason, the ACS supports Tern TV’s suggestion quoted in Annex 6 ie. “using the domicile tax status of employees as an indicator of whether an office is their usual place of employment” and “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”. This is critical to ensuring that wider economic benefits accrue to Scotland as a whole, not just to the production companies themselves. Whilst appreciating Ofcom’s response to this approach, that “Scotland is the only nation within the UK to have its own nation specific tax code”, as well as to “a person’s domicile tax status not necessarily (being) an accurate indication of where they work”, and therefore not applicable across the piece, the ACS recommends Ofcom reconsider this (eg by using it as part of the process by which a production would be assessed/ classed as Scottish in the published register).

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<sup>3</sup> BBC Annual Report / Scottish Parliament’s Information Centre (SPICE)

## **2. “Senior Personnel”**

Unfortunately, this new definition is still open to abuse. The PSB Broadcasters guidelines themselves, published last December, stated that they would be happy to have a clearer definition of these roles to avoid confusion and obfuscation. The ACS therefore thinks the Guidelines should give specific suggestions of BOTH the roles which would be acceptable under “senior personnel” eg. Executive Producers, Executive Directors of the company AND those that would not eg. Development Producer. These senior personnel are the ones who have the power within their companies to impact the ecology of the sector in Scotland, as well as the broader creative economy.

### **Criterion**

The ACS agrees with Ofcom’s decision to retain two out of the three criterion to be fulfilled under MOL. However, since the “substantive base” is so critical to each of the nations and regions outside the M25, and essential to “*support the development of independent, end-to-end production ecologies in the nations and regions*”, the ACS suggests that every MOL production should fulfil the substantive base criteria, with then the option of *either* Production Budget *or* Off-Screen Talent as the second. In addition the ACS would like to see the production fee included in the Production Budget figures, since for smaller/medium companies, this fee is critical to supporting core overheads and therefore long-term sustainability.

### **Compliance & Designated Authority**

One of the problems which Scottish stakeholders have found since the introduction of the original guidelines, lies in the area of accountability eg. there is no clear complaints procedure, including a specified timeline for dealing with reports of abuse and reporting back on conclusions. This is essential to good practice, as evidenced by complaints procedures for other public bodies, such as Ombudsmen. The perception reported to the ACS has been that when queries have been raised, they have been passed to different parts of Ofcom, with no one single team (& Head) being the ultimate designated authority. We welcome the intention to create a new complaints procedure (and note Ofcom has a well-established process in place in respect of its standards and audience protection work) and would advise the process itself should be published to ensure transparency and clarity for anyone who wishes to make use of it.

### **New regulatory regime for the BBC**

The guidance refers to the changes required to the Royal Charter to reflect Ofcom’s new regulatory role for the BBC. Whilst the ACS recognizes that Ofcom has no direct role in relation to the funding of the BBC, it is appropriate to point out the importance of the BBC with regard to MOL and stimulating the creative economies across the four nations.

More widely, the BBC's consultation about the impact of the BBC continuing to fund the free TV Licence for the over 75s has enormous repercussions for the production ecology of the UK. That, coupled with changes in viewing habits, present a real threat to the future of the whole PSB ecology of the UK. The ACS believes this is something which the BBC should not be addressing alone, but in conjunction with Ofcom, Parliament and other stakeholders.

**Advisory Committee for Scotland**

**26 February 2019**