
Review of Regional TV Production and Programming Guidance

Statement

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1. Overview

This statement sets out our final decisions on changes we are making to our Regional Production and Regional Programming Guidance, and associated compliance and reporting processes.

Television production outside of London is a crucial part of the UK's broadcasting sector. It helps to disperse and stimulate investment and job opportunities in the sector throughout the UK. It also benefits viewers by ensuring a diverse range of programmes and editorial perspectives.

To help promote this, Ofcom imposes quotas on the public service broadcasters (PSBs)¹ to ensure that a suitable proportion of their network programmes are made outside of the M25. We publish guidance to assist PSBs in determining what programmes qualify as being made outside of London.

In 2017, we launched a review of our Regional Production and Regional Programming Guidance, to ensure it remains effective in today's programme-making industry.² In light of findings from the first stage of this review, we consulted on proposed changes to the Guidance in December 2018.³ This statement takes into account a wide variety of responses.

Our package of changes will bring more rigour and accountability to the regional production regime, ensuring it better delivers the policy intention of supporting and stimulating creative economies in the UK's nations and regions.

What we have decided – in brief

- **The criteria that define a regional production will be strengthened.** The revised Guidance will make clear, for example, that in meeting the criterion to have 'substantive base'⁴ outside the M25, the production should be managed from that base and that all elements of the criterion need to be met. We are also clarifying that, in determining whether a production meets the criterion for at least 70% of the budget to be spent outside the M25, calculations should include third-party funding but exclude the production fee.
- **Self-promotional content will be excluded from counting towards the regional production quotas.** We remain of the view that broadcasters' self-promotional content has limited value in furthering the objective of the regional production regime.
- **Detailed information about the aims of each of the criteria, and how they should be applied, will be added to the Guidance.** This explanatory material will aid stakeholders' interpretation and application of the criteria, and better reflect the intention behind them. For example, the revised Guidance makes clear that the criterion to have at least 50% of production-staff costs to be spent on workers outside the M25 is designed to ensure genuine creative job opportunities, across varying levels of seniority, in TV production in the nations and regions. Following feedback from respondents, this will now be incorporated upfront within the Guidance.

¹ The BBC, Channel 3 services, Channel 4 and Channel 5

² [Holding the BBC to account for the delivery of its mission and public purposes: Consultation, 2017](#), page 41

³ [Review of Regional TV Production and Programming Guidance, Consultation, 2018](#)

⁴ See paragraph 2.5 in Section 2 for more information about each of the criteria that define a regional production

- **Spot-checks and clear reporting regime will be introduced to improve compliance and aid enforcement.** We have already begun collecting additional information from the PSBs to evidence more clearly how productions have met the criteria. We will also be enhancing our publications by making them more interactive, undertaking spot-checks to see how the Guidance is being applied, and will include additional information within the Guidance on how to make a complaint.
- **We will proceed with proposed changes to the categories to which productions should be allocated.** We are creating two new allocation categories: ‘Multi-English region’ and ‘Multi-nation outside England’, to make reporting more transparent and enable the BBC and Channel 4 to include more of their regional productions towards their quotas for different areas of the UK.
- **The policy intention of the regional production and programming regime will be made explicit within the Guidance.** This will help to remind users that the Guidance should be applied in this spirit.
- **The updated Guidance will come into effect for programmes broadcast from January 2021.** We recognise that programme making often has a long lead time, and some of the PSBs have told us that a significant proportion of their 2020 schedules have already been commissioned. So we have decided to move the implementation date of the updated Guidance to January 2021. We will also allow exceptions for titles that are broadcast in 2021, but which were commissioned before 1 July 2019.
- **We will gather further evidence regarding our plans to require the substantive base to be operational prior to the point of commission.** Although some stakeholders were supportive of this proposal, feedback from some of the PSBs indicated that this change could harm the development of production centres in the nations and regions, by disincentivising production companies from opening. We still consider that this change could bring greater longer-term sustainability to the production sector in the nations and regions. However, we will gather more evidence from PSBs to assess its impact before deciding whether to implement it.
- **We will allow the changes to the Guidance to take effect before considering whether to conduct an industry survey.** We had proposed carrying out an industry survey to obtain a more detailed understanding of the mix of London and nations and regions talent and resources employed in the making and commissioning of regional productions. Given some of the practical constraints we have identified, and taking on board some respondents’ views, we will not conduct an industry survey imminently. Instead, we will wait for the changes in this statement and relevant industry developments to bed in. We will then consider using a survey to reflect on how the industry is developing.

This overview is a simplified high-level summary only. The decisions we have taken and our reasoning are set out in the full document.

Summary of changes

Licence requirements	Guidance	Compliance	Enforcement
Regional production quotas on minimum % hours and spend	Regional productions must meet at least two out of the three criteria	Reporting – PSBs submit data to Ofcom annually reporting on whether they met their quotas and the productions they have counted towards their quota	Complaints dealt with on a case by case basis. If a licence obligation is breached, we will take appropriate enforcement action
Requirement for regional productions (taken together) to provide a suitable range of programmes and use a suitable range of production centres	Regional productions must be allocated to a nation, one of three English macro-regions or as multi-region	Reporting - Additional annual data reporting by the PSBs	Complaints process clarified and links to complaint forms included in the Guidance
Regional programming quotas for BBC and Channel 3 services	Regional programming should follow respective definitions	Publications – Annual PSB data pack: includes PSB regional production quota delivery. Annual Made Outside London Titles Register: listing details of the productions counted towards the quota	
Have regard to any guidance published by Ofcom	Criteria strengthened and clarified		
Reporting obligation to provide accurate information when requested under our information gathering powers	Self-promotional programming excluded from the quotas	Publications – Increased range and volume of data Ofcom publishes. Single interactive digital publication including all relevant data	
	Information about the aims of each criterion and more detail about how they should be applied	Monitoring - Spot check monitoring of titles submitted as regional productions by the PSBs	
	Wording highlighting the policy objectives of the regional production and regional programming obligations		
	Two new quota allocation categories: multi-English region and multi-nation outside England. Clearer explanation of how to allocate titles		

Source: Ofcom. Note: Green text indicates the changes we have made to the regime

2. Background

Regional production and programming

- 2.1 Ofcom is required to ensure that a suitable proportion of the productions that the Public Service Broadcasters ('PSBs')⁵ commission for UK-wide television broadcast⁶ ('network programmes') are made in the UK outside of the M25, and additionally for the BBC, in the nations ('regional productions').⁸ Ofcom has imposed quotas on the minimum proportion of hours and expenditure that must be allocated to regional productions. The level of the quotas varies by broadcaster and is set out in each of the PSBs' licences⁹. Ofcom has also imposed licence conditions which require each of the PSBs to ensure that their regional productions (taken together) constitute a suitable range of programmes, and that their expenditure on regional productions is referable to a suitable range of production centres outside the M25.
- 2.2 Ofcom must also ensure that a suitable amount of time is given to regional programming of particular interest to people living in the geographic area where the service is provided.¹⁰ Ofcom has set regional programming quotas for BBC One, BBC Two¹¹ and the Channel 3 services. Regional programmes should deal with a subject matter of specific interest to the region and of less interest elsewhere, for example regional events, concerns and interests. This type of programming is likely to directly reflect particular parts of the UK's nations and regions back to viewers in these areas. A suitable proportion of these programmes should also be made in the area where the service is provided.
- 2.3 The intention behind the statutory duties on regional production and regional programming was to create "strong regional production centres", which can "create jobs, opportunities for training and gateways into the creative industries at a national level" and that regional production obligations in particular can "help to address geographical imbalances within the national television production industry".¹²

⁵ The PSBs which are subject to regional production obligations are the BBC, Channel 3 services, Channel 4 and Channel 5. As such, when we use the term 'the PSBs' throughout this document, these are the broadcasters we are referring to unless otherwise stated. S4C is not subject to these obligations.

⁶ Or, in the case of Channel 3, for broadcast in more than one regional area

⁷ The term 'regional productions' is set out in the Communications Act 2003 and when we use it we are referring to network programmes made in the UK outside of the M25, including in Scotland, Wales and Northern Ireland

⁸ As set out in sections 286 and 288 of the [Communications Act 2003](#) ('the Act') and the [BBC Charter and Framework Agreement, see Schedule 2, paragraph 7 of the BBC Framework Agreement](#)

⁹ For more information about the levels of these quotas please refer to our [Review of Regional Production and Programming Guidance: Consultation, December 2018](#) pp. 8-9

¹⁰ Section 287 of the Act and Schedule 2, paragraph 6 of the BBC Framework Agreement

¹¹ These conditions are for BBC One and Two taken together. The BBC also has obligations to provide news programming of national or regional interest on BBC One. Under the new BBC Scotland Channel, BBC Two Scotland opt-out programming has been discontinued as it is instead broadcast on the new channel

¹² A New Future for Communications 2000, paragraphs 4.46 and 5.7.1-5.7.2

- 2.4 Ofcom has published *Regional production and regional programme definitions: Guidance for public service broadcasters* ('the Guidance').¹³ This sets out the approach we have taken to interpreting the statutory obligations. It includes our definitions of regional productions and regional programming, explains how we expect the PSBs to comply with their quotas, how productions should be allocated to particular geographic areas, as well as how we monitor compliance with the obligations. This is intended to help ensure that the PSBs deliver their quotas in a consistent way. The PSBs are required to have regard to the Guidance in complying with their licence obligations.
- 2.5 The Guidance sets out that, to count towards the regional production hours quota, titles must meet at least two out of the following three criteria:
- *“the production company must have a substantive business and production base 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* *Review of the Guidance;*
 - *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*
 - *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.”*
- 2.6 In 2017 we announced our intention to review the Guidance.¹⁴ We felt that it was necessary to carry out the review for a number of reasons, including: the changes in the TV production landscape since the Guidance was first introduced in 2004; the ongoing market developments at that time such as Channel 4's plans to open a 'National Headquarters' and two smaller 'creative hubs' outside of London; the new regulatory regime for the BBC which came into affect in 2017; to assess how the Guidance was being applied in practice; and our commitment within the Guidance to monitor the balance between regional productions originated by regionally-based and London-based producers.
- 2.7 To build our evidence base for the review and understand how the Guidance was working in practice, we engaged with the industry at a series of regional workshops and published a Call for Evidence ('CFE') in March 2018.¹⁵ Alongside this, we also commissioned some consultancy work, which provided us with analysis to understand better the performance of the production sector in the nations and regions, and how this has changed over time.¹⁶

¹³ [Regional production and regional programme definitions: Guidance for public service broadcasters, 2010.](#)

¹⁴ [Holding the BBC to account for the delivery of its mission and public purposes: Consultation, 2017](#), page 41

¹⁵ [Review of Regional TV Production and Programming Guidance: Call for Evidence, March 2018](#)

¹⁶ [Oliver & Ohlbaum, Regionality trends within the UK production sector, September 2018](#)

- 2.8 Overall, responses to the CFE showed that while there was general industry support for the Guidance and the substance of the three criteria which define a regional production, there were concerns about how the Guidance was being applied and complied with. Responses to the CFE suggested that the Guidance can be interpreted in different ways and that PSB oversight of the application of the Guidance appeared to be limited. Stakeholders suggested that improvements to PSB reporting and Ofcom's compliance and complaints processes were necessary. Many users of the Guidance also wanted more clarity from the document to help to ensure consistent interpretation and application.
- 2.9 With these findings in mind, in December 2018 we published a consultation ('the Consultation') setting out proposed changes to the Guidance, alongside an explanation, for information, of how we planned to amend our compliance and enforcement processes.¹⁷
- 2.10 In the Consultation we outlined our decision to rule the regional programming part of the Guidance out of scope for this review. In response to the CFE the stakeholder feedback and desire for substantive change to this section of the Guidance was limited, and so we decided not to propose any specific amendments to the regional programming definitions. Though, as outlined in the Consultation, we have made some technical updates to reflect the new regulatory regime for the BBC and note that changes to the regional production criteria will impact on determining whether regional programmes were made in the area where the service is provided.¹⁸

This statement

- 2.11 The Consultation closed on 27 February 2019; in total we received 147 submissions. Of these responses 60 were letters of support for the Indie Club's response and 64 were similarly worded responses regarding on-screen talent. The remaining submissions were from a wide range of stakeholders from across the UK including all of the PSBs, Pact, Ofcom's Advisory Committees for Scotland, Wales and Northern Ireland, industry bodies, production companies, and freelance talent. We have considered all of these responses in reaching our conclusions and have published non-confidential responses on our website.¹⁹
- 2.12 This statement outlines our decisions following our review of the Guidance. It summarises the responses that we received from stakeholders in response to the Consultation, and sets out the amendments that we have decided to make to the Guidance as well as our own compliance and enforcement processes.

¹⁷ [Review of Regional Production and Programming Guidance: Consultation, December 2018](#)

¹⁸ [Review of Regional Production and Programming Guidance: Consultation, December 2018, pp.44-45](#)

¹⁹ [Responses to the Review of Regional Production and Programming Guidance: Consultation, December 2018](#)

PSB joint guidance

- 2.13 The BBC, ITV, Channel 4 and Channel 5 published their own collective best practice advice in December 2018, ('PSB joint guidance'), which aims to support producers in delivering regional productions based on the PSBs' interpretation of Ofcom's existing Guidance.²⁰ While we recognise that the PSBs may find this a helpful means of ensuring that production companies are able to comply with any relevant contractual obligations, it is of course the PSBs' responsibility to ensure that they each comply with their licence obligations. Ofcom has not had a role in reviewing or approving the PSBs' joint guidance.
- 2.14 Where appropriate, we have considered the PSB joint guidance on interpreting the criteria as an additional input to the Consultation, such as where stakeholders have highlighted particular points in their responses. For the avoidance of doubt, references in this statement to the PSB joint guidance do not indicate an endorsement by Ofcom of that guidance.

Impact assessment

- 2.15 Impact assessments, as defined in section 7 of the Act, provide a valuable way to assess options for regulation and show why the proposed option is preferred. Ofcom has also published documentation on its approach to impact assessments.²¹
- 2.16 The analysis presented in the Consultation including the annexes in December 2018²², provided our assessment of the impact of our proposals on stakeholders. This statement updates the assessment in light of responses and therefore constitutes an impact assessment for our changes to the Guidance and wider regime.

Equality impact assessment

- 2.17 We assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. This is known as an equality impact assessment ('EIA') and is designed to assess whether our proposals are likely to have any particular impact on consumers protected by equality law, to ensure that our policies do not discriminate or disadvantage different consumers in different ways. EIAs assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.
- 2.18 It is not apparent to us that the outcome of our review of the Guidance is likely to have any particular impact on any persons with protected characteristics. More generally, we do not envisage the impact of any outcome to be to the detriment of any group of

²⁰ The joint guidance can be found on these PSBs' websites: [BBC](#), [ITV](#), [Channel 4](#), and [Channel 5](#)

²¹ [Better Policy Making: Ofcom's approach to Impact Assessments, July 2005](#)

²² [Review of Regional Production and Programming Guidance: Consultation, December 2018](#)

society. Nor do we consider it necessary to carry out separate EIAs in relation to race or gender equality, or under our Northern Ireland Equality Scheme and Disability Equality Scheme.

3. Our review of the Guidance

- 3.1 Feedback from stakeholders in response to the CFE and our industry workshops suggested that we did not need to redesign the regional production system fundamentally. Instead, it was suggested that changes needed to be made to ensure regional productions are made more in-line with the Guidance, and that more clarity was needed from the document to help to ensure consistent interpretation and application. Key concerns we heard from stakeholders centred around cases of inaccurate application of the Guidance, productions where the Guidance was being applied accurately but which did not deliver the policy intent, and the role of London in nations and regions production. There were also concerns about the PSBs' data gathering and reporting, Ofcom's publications, and Ofcom's monitoring and complaints processes.
- 3.2 With these in mind, the proposed changes to the Guidance on which we consulted focussed on how we could bring greater rigour and accountability to the regime to ensure that regional productions deliver the policy intent.
- 3.3 This section sets out our analysis of stakeholder responses to our consultation and our decisions about the changes we are making to the Guidance. Taking each proposal in turn, we first set out our consultation position, followed by a summary of the responses we received from stakeholders, and finally our decision (including our response to relevant stakeholder comments). In reaching our decisions, we have taken account of stakeholder views and any other relevant evidence we have gathered.
- 3.4 The updated Guidance can be found at Annex 1. We have also published the updated Guidance in the relevant area on our website.²³ Section 5 of this document explains when the updated Guidance will come into effect.

Inclusion of a statement of the policy intent

What we proposed

- 3.5 We proposed to make the policy objective of regional productions clear at the start of the Guidance. We felt that this would provide a lens through which the Guidance could be interpreted, which would help to guide the PSBs better in instances where they may be struggling to decide whether or not their intended approach to meeting the criteria is appropriate.

²³ [Regional production and regional programming definitions for titles broadcast from 2021](#)

Summary of comments

- 3.6 The majority of respondents agreed with this proposal and thought that this would be useful for both the PSBs and producers when interpreting the criteria. A small number of respondents agreed with this change but also wanted us to go further. This included the Indie Club, who wanted additional text to be added to the aim of the regional production obligations to encourage greater use of local companies, more senior talent being employed in the nations and regions, pre and post-production to occur in the nations and regions, and more PSB commissioners to be based outside of London.²⁴
- 3.7 With regards to the policy aim of the regional programming obligations, STV noted that it would like us to remove the term ‘local interest’, since it argued that regional programmes do not have to be about local communities in order to be relevant to the audiences they are meant to serve and this can narrow the range and diversity of the programming on offer. It therefore suggested the term should be removed, and we should instead require the programmes to be of regional or national interest.²⁵

Our decision

- 3.8 Stakeholders agreed that this addition to the Guidance would be a useful aid when it comes to the application of the criteria, and we continue to believe it is necessary. The aims of both of these sets of obligations were determined by Parliament. We do not think it would be appropriate to set out more granular detail regarding how a programme should be made, beyond what we have stipulated in the criteria. In addition, we do not believe that only local companies should be able to make regional productions, as this would reduce the flexibility of the current regime. We would also note that Ofcom does not have any role to play in determining the location of the PSBs’ commissioners. As such, we have decided to include the wording we proposed in our consultation in the Guidance for regional productions.
- 3.9 For regional programming, we accept STV’s arguments that our reference to such programmes needing to be of ‘local interest’ could narrow the programming on offer. As such, we have decided to amend the wording of the aim to read as follows “[...]programmes which are relevant to them and the areas in which they live”, which we believe is an accurate reflection of the intention of the requirements.

Changes to the criteria: Substantive base

What we proposed

- 3.10 We proposed three changes to the substantive base criterion. The first was to stipulate that a substantive base should be operational prior to the point of commission. This change was intended to prevent temporary and “pop-up” offices from qualifying for the

²⁴ [Indie Club](#), p.3

²⁵ [STV](#), p.3

criterion. We felt that the change would improve confidence in the definition of the criterion and encourage broadcasters to take a longer-term view of their approach to commissioning in the nations and regions. However, we recognised that this change could change the balance of the companies commissioned to make regional productions by disincentivising established companies from seeking to set up new permanent or temporary offices in the nations and regions.

- 3.11 The other two proposed changes were clarificatory amendments to make it clear that the production in question must be made from that substantive base, and that all elements of the criterion need to be met. These changes aimed to help ensure the criterion is delivered in the way that was always intended.
- 3.12 We also proposed to provide some explanatory notes to address some specific questions raised by stakeholders about this criterion.

Summary of stakeholders' comments and our decisions

Operational prior to the point of commission

What respondents said

- 3.13 This proposed change drew the widest range of comments and views from respondents, with those based in the nations and regions tending to support the proposed amendment, while others, such as some of the PSBs, disagreeing with it.
- 3.14 Those who supported the change included the Indie Club, STV, Directors UK and the Ofcom Advisory Committees for Scotland, Wales and Northern Ireland ('ACS', 'ACW' and 'ACNI').²⁶ Many were positive that the change would help to prevent temporary and pop-up offices from counting towards the criterion, and some commented that it should mean that regional productions would deliver more of a lasting presence when this criterion is met. In addition, The Welsh Government felt that the change would be a better articulation of the policy intent.²⁷
- 3.15 Some of the respondents who were supportive of the change did recognise that there could be potential disadvantages of the proposal. This included the ACNI who highlighted that it could possibly disincentivise companies from setting up new bases, but on balance felt that such a change was necessary given the potential benefits and also noted that productions would still have the option of meeting the other two criteria in order to qualify as regional.²⁸ The Indie Club highlighted that the change had the potential to decrease the number of productions meeting the substantive base criterion. However, it was comfortable that this could be monitored by Ofcom over

²⁶ [Indie Club](#), pp. 8-11; [Advisory Committee for Scotland](#), p.2; [Advisory Committee for Wales](#), p.2; [Advisory Committee for Northern Ireland](#), p.3; [STV](#), p.3; [Directors UK](#), pp. 1-2.

²⁷ [The Welsh Government](#), p.2

²⁸ [Advisory Committee for Northern Ireland](#), p.3

time, and noted that if it dropped too far Ofcom should consider making the criterion mandatory.²⁹

- 3.16 STV, TAC and the ACW felt that in order for this change to be effective, we needed to go further and require the substantive base to have been operational for a set period of time beforehand.³⁰ The ACW felt that a period of 18 months would be reasonable.
- 3.17 On the other hand, the BBC, ITV, Channel 4 and Viacom International Media Networks/Channel 5 ('Channel 5') disagreed with this proposal. Overall, they were of the view that it could disincentivise companies from attempting to set up in the nations and regions, which would be counter to the aim of the regime. Indeed, the BBC noted that the change could impact on the future development of production ecosystems, particularly in areas which cannot take advantage of large structural investments and thus need to rely on the development of new substantive bases to support new commissions or the relocation of existing series.³¹
- 3.18 Channel 4 was of a similar view, highlighting the importance of supporting companies who want to open new offices in the nations and regions, as they help to support long-term, sustainable growth in production outside of London.³² It noted such moves can help to grow centres of excellence, which in-turn can help to grow and develop a larger pool of highly-skilled talent.³³ Channel 4 explained that it believes that opening a new, fully functioning office with permanent staff, absent the certainty of a commission, would represent too great a financial risk for the companies involved.³⁴ ITV's response also supported this position, noting how challenging it can be for companies seeking to start a new business, and that this proposal would make it even more difficult.³⁵
- 3.19 We recognised within the Consultation document that our proposed change could have a negative effect on the incentives of established companies from seeking to set up offices in the nations and regions. However, we were of the view that the flexibility that the regime offers meant that by meeting the other two criteria the company could still set up the new office after the point of commission and the production would count as regional. Provided that that office stayed open, it would then be able to meet the substantive base criterion for its next commission. In response, Channel 5 highlighted that this would mean that the flexibility offered by having to meet only two of the three criteria would be removed in these instances, and ITV felt that denying the very newest producers this critical flexibility seemed counterintuitive.³⁶ In addition, both the BBC and Channel 4 noted that production companies can face difficulty in meeting the other two criteria, particularly when trying to introduce a new genre to an area and when

²⁹ [Indie Club](#), pp. 8-11

³⁰ [STV](#), p.3; [TAC](#), pp.3-4; [Advisory Committee for Wales](#), p.2

³¹ [The BBC](#), p.10

³² [Channel 4](#), p.6

³³ [Channel 4](#), pp.7 & 9

³⁴ [Channel 4](#), p.7

³⁵ [ITV](#), pp.5-6

³⁶ [Viacom International Media Networks/Channel 5](#), p.1; [ITV](#), p.5

there is a skills gap. As such, the BBC stated that the proposed change could entrench genre-specific silos in some areas.³⁷

- 3.20 As an alternative and more targeted solution to the issue of temporary and pop-up offices, the BBC noted that it looks back at offices to see if they are still open and considers removing titles from being classed as regional productions if the office has closed.³⁸ Some of the PSBs also highlighted different points in the production lifecycle at which they would be more comfortable with the base being operational. For the BBC and Channel 5 this was at the start of the production, and for Channel 4 it was prior to the point of contract.³⁹ ITV suggested that instead of focussing on when the office opens, we could instead require that the broadcasters ensure producers provide them with an evidenced intention to maintain the base post broadcast, and have documentation available for Ofcom on request.⁴⁰ A similar suggestion was also raised by Directors UK, who, while generally supportive of the proposed change, recognised that some companies may not be in a position to open an office without a commission. As such, it proposed that production companies could have the flexibility to meet the substantive base criterion either by being operational prior to the point of commission, or by requiring the company to commit to establishing and retaining a development presence in the nation and region for a set period of time.⁴¹
- 3.21 Pact appreciated the aim of this proposed change which was to prevent pop-up offices from meeting the criterion. However, it was keen to ensure that small and start-up companies would not be disadvantaged in any way, and noted how difficult this could be in cases where the broadcasters ask production companies to move returning series outside of London. As such, it called for some flexibility in how the requirement would be interpreted.⁴²

Our decision

- 3.22 We still consider that this proposed change could contribute to greater sustainability in the production sector outside of London, by encouraging broadcasters to take a longer-term approach to commissioning in the nations and regions and by preventing pop-up and temporary offices from counting towards the criterion. This view was clearly supported by some responses to the Consultation. However, some respondents have drawn attention to the potential risks that the proposal could pose to the growth and development of the production sector in the nations and regions and the possible unintended consequences for delivery of the policy intent.
- 3.23 We do not believe that changing the stage in the production lifecycle at which the base should be operational, as suggested by some of the broadcasters, would be an effective alternative solution. The aim of our proposed change was to ensure that only

³⁷ [The BBC](#), pp.6-7 and 10; [Channel 4](#), pp.8-9 & 10-11

³⁸ [The BBC](#), p.11

³⁹ [The BBC](#), p.11; [Viacom International Media Networks/Channel 5](#), p.3; [Channel 4](#), p.1 & p.8

⁴⁰ [ITV](#), pp.7-8

⁴¹ [Directors UK](#), pp. 1-2

⁴² [Pact](#), pp.5-6

companies which are already operating in the nations and regions can meet the substantive base criterion. Requiring bases to be operational prior to the point of contract or at the start of production would not achieve this aim since it would still allow companies to set up new offices in the nations and regions after securing a commission.

- 3.24 We also considered the suggestions made by ITV and Directors UK to allow production companies to meet the criterion after commission, provided there is an evidenced intention to keep the base open after the production in question. However, whilst we agree in principle that this could be a useful way to guard against pop-ups, we are concerned that this would be difficult to evidence and may be open to gaming.
- 3.25 In their responses, some of the PSBs provided us with some anecdotal case studies to explain better the potential negative impacts of this change. We accept in principle that the change could lead to some reduction in flexibility for PSBs in influencing the opening of new offices of established companies in the nations and regions, at the point of commissioning programmes. However, no firm evidence was provided to us to indicate the scale of the impact this proposal could have. As such, it is unclear how many titles could be impacted by this change. We also do not currently have any evidence to understand how often offices which open after securing a commission end up staying open and embedding themselves in a particular nation or region.
- 3.26 With this in mind, whilst we still consider that our proposal could bring benefits in terms of its contribution to the sustainability of the production section outside London, we consider that it is appropriate to gather some further evidence before reaching a decision whether to implement it. Therefore, we have decided to not to make this change to the substantive base criterion at this time.
- 3.27 We will request information from the PSBs about whether, for programmes where the substantive base criterion is met, that substantive base was open prior to the point of commission. We also plan to request information about whether the offices stayed open after the relevant commission had been completed and whether they secured any further commissions from those bases. This will allow us to understand how often new offices are opening in light of achieving a commission, and also whether these offices are temporary or whether they stay open and make a longer-term impact to the creative economy in that area, which ultimately would help support the policy objective.
- 3.28 We will engage with the PSBs as soon as possible to ensure that they will be in a position to provide this information to us in due course. We will decide whether to proceed with this proposal once we have gathered the further evidence we need and can better assess whether the benefits we think it will deliver outweigh any of the potential unintended consequences highlighted by some stakeholders.

Production in question must be made from the substantive base

What respondents said

- 3.29 Of those who commented on this proposed clarification, the majority agreed with it. This included the ACNI, the Indie Club and Directors UK.⁴³ The Indie Club, in particular, stated that it felt the change was essential in order to deliver the intention behind the regional production regime.
- 3.30 Some other respondents were in agreement with the proposal, but sought more clarity on what it would mean in practice and highlighted some potential unintended consequences of the proposed wording. This included the BBC who wanted certainty that the change would not inadvertently prevent or discourage filming on location, and that the word ‘from’ should not be interpreted to mean ‘at’.⁴⁴ Channel 4 was also worried that the current terminology was ambiguous and could be misinterpreted. It highlighted examples of companies with substantive bases in the nations and regions, but which open temporary production offices in the location of filming, which could be deemed as where the production is technically ‘made from’.⁴⁵
- 3.31 ITV stated that more clarity was needed regarding the term ‘made from’ since the bulk of production does not actually take place within corporate offices. It suggested we should clarify whether the intention was to make clear that the production should be ‘managed from’ or ‘run from’ that substantive base instead.⁴⁶ Pact also thought that the term ‘made from’ meant that the production had to be ‘made at’ the base, which it felt would be too restrictive and could inhibit smaller companies from being able to produce programmes in areas where they do not have a base. It also noted that this requirement should only apply where a production is claiming a substantive base and this should be clarified in the text of the Guidance.⁴⁷

Our decision

- 3.32 Broadly speaking, stakeholders were supportive of this proposed clarification, and we have decided to include it. We acknowledge, based on feedback from responses, that the term ‘made from’ could be open to various interpretations. The intention behind this additional wording was to make it clear that the production should be managed or run from the substantive base, and that producers should not claim to meet the substantive base criterion just because they have a substantive base in the nations and regions when, in reality, the management of the production and decision making takes place elsewhere. We do not require the filming to take place at the substantive base. With this in mind, we have amended the wording of this requirement to read “The production in question must be managed from that substantive base”.

⁴³ [Advisory Committee for Northern Ireland](#), p.3; [Indie Club](#), p.8; [Directors UK](#), p.2

⁴⁴ [The BBC](#), p.12

⁴⁵ [Channel 4](#), p.12

⁴⁶ [ITV](#), p.8

⁴⁷ [Pact](#), p.6

All elements of the criterion must be met

What respondents said

- 3.33 Only a small number of respondents commented on this proposal within their responses, all of whom agreed. This included the ACNI along with Channel 4 and the BBC who welcomed the clarification and noted that this is already in-line with how they interpret the criterion, which is reflected within the PSB joint guidance.⁴⁸

Our decision

- 3.34 Since we only received comments of support for this proposed clarification, we remain of the view that it is a better articulation of how the criterion should be applied and have therefore decided to make this clarification.

Explanatory notes

- 3.35 We received a large number of comments regarding the explanatory notes. Some of the comments related to the notes as a whole, whilst others related to the individual notes under each of the criteria. We explain the position we have taken to the notes relevant to each of the criteria in these upfront sections, so that stakeholders can see how each criterion has changed as a whole. Paragraphs 3.120 - 3.124 below summarise the comments we received about the notes overall, and our decisions on the inclusion of the notes and where they will be published.
- 3.36 The notes we proposed for the substantive base criterion covered the following areas:
- **How many individuals need to be employed at the base:** We proposed that the number would be likely to vary depending on each company's circumstances.
 - **Whether the substantive base needs to be its own legal company:** We proposed that it did not need to be its own legal company, since we consider that the corporate structure adopted by the production company is largely irrelevant to the application of the substantive base criterion.
 - **Which jobs can be counted as executives and senior personnel:** We did not consider it appropriate to list specific job titles, but proposed that individuals filling these roles would be responsible for making executive decisions and/or having a significant leadership role.
 - **Whether special purpose vehicles ('SPVs')⁴⁹ can be counted as a substantive base:** We proposed that the key issue for a production made from an SPV is whether the SPV meets all of the elements of the substantive base criterion.
 - **What operational prior to the point of commission means:** We proposed that a base should be up and running with executives running the regional business and senior personnel seeking commissions from that base. We explained that there is no minimum period of establishment.

⁴⁸ [Advisory Committee for Northern Ireland](#), p.3; [Channel 4](#), p.12; [The BBC](#), p.13

⁴⁹ 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.

What respondents said

- 3.37 **How many individuals need to be employed at the base:** The BBC agreed that the number of individuals who need to be employed at the substantive base to meet the criterion would vary depending on the production in question.⁵⁰ Channel 5 wanted further clarity regarding how Ofcom would define a ‘start-up’ company, since it strongly believed that in certain circumstances, it would be acceptable for one person to satisfy all of three elements of the substantive base criterion, even where that new base is part of a larger organisation. It wanted this to be clarified in the Guidance.⁵¹ However, on the contrary, another respondent was of the view that when an existing company is setting up a new subsidiary office it should not be allowed to meet the criterion with just one person. It also felt that such offices should be required to evidence permanent business functions at the base, and an ambition to be a permanent entity.⁵²
- 3.38 **Whether the substantive base needs to be its own legal company:** The BBC agreed with our notes that the substantive base does not need to be its own legal company.⁵³
- 3.39 **Which jobs can be counted as executives and senior personnel:** This note generated the greatest number of comments from respondents in relation to this criterion. Whilst most respondents were supportive of the extra clarity we were providing, some believed that it was necessary for us to go further and list the specific job titles that would count as executives or senior personnel. This included the ACS who felt that the definition we had included was still open to abuse, and that we should give specific suggestions of both roles which would be acceptable, as well as roles which would not.⁵⁴ Directors UK also wanted us to include examples and noted that, despite the variations by genre, there are some senior roles which are consistent across all productions which could be included within the note.⁵⁵ The Indie Club was also of the same view and listed some examples of key roles which it argued are universally recognised, while STV suggested we adopt the approach taken in the PSB joint guidance which also gives some examples of the types of roles which would count.⁵⁶ The Scottish Government also felt that our note needed to go further, but instead of listing job titles, it suggested making it clear that the senior staff should be autonomous decision makers.⁵⁷ However, both the Welsh Government and the ACW did not think it was sensible to give examples of the job roles which might count as senior personnel or executives. They agreed with our approach which was to instead focus on whether the individuals which count as senior

⁵⁰ [The BBC](#), pp.14-15

⁵¹ [Viacom International Media Networks/Channel 5](#), p. 4

⁵² [Name withheld 1](#), pp.1-2

⁵³ [The BBC](#), pp.14-15

⁵⁴ [Advisory Committee for Scotland](#), p.3

⁵⁵ [Directors UK](#), pp.3-4

⁵⁶ [Indie Club](#), p.12; [STV](#), p.5

⁵⁷ [The Scottish Government](#), p.6

personnel and executives have a significant leadership role or can make executive decisions.⁵⁸

- 3.40 **Whether SPVs can be counted as a substantive base:** The BBC did not agree with our position that SPVs which are temporary in nature would be unlikely to meet all elements of the substantive base criterion, as it felt such bases, whether they are temporary or not, could meet all of the elements. In contrast, Two Rivers Media were of the view that an SPV should not be able to count as a substantive base since they tend to only exist to service a particular programme, and therefore would not be able to demonstrate the general activity of a genuine production company.⁵⁹ The Welsh Government felt that we should add more detail to this note by explaining that an SPV would be less likely to meet the requirements for the base to be operational prior to the point of commission and be the usual place of employment for senior personnel involved in seeking programme commissions.⁶⁰
- 3.41 **What operational prior to the point of commission means:** Some stakeholders commented on this note; however, since we are not proceeding with the proposal to require a base to be operational before the point of commission at this time, we will not be introducing this note. We will take the relevant comments into account in deciding on any further change to the Guidance on this issue.

Our decision

- 3.42 **How many individuals need to be employed at the base:** Taking into account the comments we received, we have decided to include this note. We also recognise that existing companies setting up new offices in the nations and regions are still exposed to some of the same risks as brand new offices. As such we are of the view that ‘start-ups’ could include a newly opened regional office of a London-headquartered production company, and have made this clear within the Guidance.
- 3.43 **Whether the substantive base needs to be its own legal company:** Given we only received one comment of support for this note, we have decided to proceed with its inclusion.
- 3.44 **Which jobs can be counted as executives and senior personnel:** We have considered the range of points from stakeholders, and remain of the view that in order for our notes to work across all genres and for all producers, it is not appropriate for us to provide a list of the specific job titles which can be counted as executives and senior personnel. What we deem as being the most important factor here is that, regardless of a person’s job title, they are responsible for making independent, executive decisions and/or having a significant leadership role in relation to the management of the regional businesses, the production in question, or seeking programme commissions (see paragraph 3.52 below for additional points in relation to this note). We note that the PSB joint Guidance does provide some examples of job roles, which we do not

⁵⁸ [The Welsh Government](#), p.3; [Advisory Committee for Wales](#), p.2

⁵⁹ [Two Rivers Media](#) p.2

⁶⁰ [The Welsh Government](#), p.3

provide a view on, and we would encourage the PSBs responsible for the PSB joint guidance to consider the responses we received on this point from stakeholders.

- 3.45 **Whether SPVs can be counted as a substantive base:** We remain of the view that if a title is made from an SPV, the main point to consider is whether the SPV meets all elements of the substantive base criterion. As such, we have decided to include this note in the Guidance.

Additional comments

What respondents said

- 3.46 As outlined in the Consultation, the role that London plays in regional productions was a key theme which emerged from responses to our CFE, with many stakeholders being of the view that there needs to be a reduced reliance on London-based companies, facilities and talent. We also received calls to make further changes to this criterion, beyond our proposals, which aimed to minimise the role of London in regional productions.
- 3.47 The main suggestion in this area, which was raised by a few respondents including the Indie Club and Two Rivers Media, was for there to be a requirement that the substantive base and the staff based there are operationally independent from any other office or London headquarters. Specifically, the Indie Club proposed new wording to add to the criterion which would require the senior executives who have their usual place of employment at that base to be operationally independent. In practice, it said that this would mean the senior staff who are based there would be able to oversee pre and post production in the nations and regions, which it felt would create more jobs and ensure each programme or series left a creative and economic legacy. Without this change, the Indie Club was of the opinion that the majority of post production and even pre production will continue to happen in London and production bases around the UK would not be able to grow and thrive.⁶¹ Two Rivers Media suggested amending the definition of a substantive base to focus on ensuring the base was operationally independent, which it felt would more adequately safeguard and promote production businesses which are indigenous or genuinely based in the nations and regions. As part of the definition, it would be required that the three key roles based at the office are domiciled in the relevant nation or region.⁶²
- 3.48 A few other respondents also believed that requiring staff based at the substantive base to be domiciled in the relevant nation or region, rather than it being their usual place of employment, would make the regime more robust, such as the Scottish Government and the ACS.⁶³
- 3.49 The Scottish Government was also keen to reduce the role of London-based companies in some particular genres. It cited analysis that showed that drama and comedy

⁶¹ [Indie Club](#), pp.8-11

⁶² [Two Rivers Media](#), p.1; [Two Rivers Media Annex](#), pp.1-2

⁶³ [The Scottish Government](#), p.2; [Advisory Committee for Scotland](#), p.2

productions are less likely to meet the substantive base criterion and be produced by London-based companies, and therefore suggested that the substantive base criterion should be mandatory for these genres, to disperse production in these vital genres across the UK.⁶⁴

- 3.50 Beyond these suggestions for change, some stakeholders also sought more clarity regarding some of the terms used within the criterion. Tern felt that the use of the term ‘usual place of employment’ within the criterion lacked clarity.⁶⁵ Similarly, Pact wanted to know more about Ofcom’s interpretation of ‘usual place of employment’ and suggested using the definition contained within the PSB joint guidance.⁶⁶
- 3.51 Finally, a few respondents commented on the stated aim of the substantive base, which was a proposed new addition to the Guidance. The BBC, the ACS and Pact agreed with the aim.⁶⁷ However, some respondents were of the view that the aim needed to go further, including the Indie Club who suggested changing some of the wording to build on its points outlined earlier regarding the need for the base to be operationally independent, helping to build end-to-end production bases in the nations and regions.⁶⁸

Our decision

- 3.52 As set out in the Consultation, we are of the view that London can play a positive role in regional production. It is important that production centres in the nations and regions can draw upon London-based resources where necessary, but we also acknowledge that it is desirable for the development of a truly sustainable regional production sector that they are able to stand alone and work independently of London where possible. It is important that the staff based at the substantive base are genuinely based at that office, and that it is their usual place of employment. Within the explanatory notes on which we consulted, we explained that the senior personnel and executives based at the substantive base will be those who have a significant leadership role or who are responsible for making executive decisions. By this, our intention was to make clear that these roles should be filled with those who have the authority to make decisions in relation to that business’ operations, or the production in question. Based on suggestions from responses, we have decided to make this clearer by stating in the Guidance that individuals who fill these roles should be those responsible for making independent, executive decisions.
- 3.53 Whilst we recognise the desire from some stakeholders, particularly those in areas where there is a distinct tax coding system, for staff working at the substantive base to be domiciled in that area, we remain of the view that this change would not be practical. It would not be applicable to the areas of the UK which do not have their own specific tax codes. In addition, a person’s domicile tax status is not necessarily an accurate indication of where they work, or indeed where they live, and so this could

⁶⁴ [The Scottish Government](#), pp.2 & 6

⁶⁵ [Tern](#), p.1

⁶⁶ [Pact](#), p.6

⁶⁷ [The BBC](#), p.13; [Advisory Committee for Scotland](#), p.2; [Pact](#), p.5

⁶⁸ [Indie Club](#), pp.11-12

disadvantage those who are genuinely working and/or living in an area, but who for tax purposes are domiciled elsewhere for historic reasons. We note that Two Rivers Media suggested that domicile could be interpreted to mean where they pay their taxes or, in areas where that is not applicable, where their usual place of residence is. However, we remain of the view that the base should be that person's usual place of employment, rather than requiring them to live within the same nation or macro-region, as there may be some occasions where staff are genuinely working in a nation or region, but live just outside of that nation or region.

- 3.54 We do not require the substantive base to be a mandatory criteria for any particular genre. We remain of the view, that regardless of the genre, the flexibility to meet the production budget and talent criteria instead of substantive base is designed to ensure all producers have a level playing field when pitching for regional production commissions and to ensure that the PSBs have the freedom to commission and deliver a mix of genres from a variety of different locations.
- 3.55 We agree with respondents that we could be clearer regarding what we mean by the term 'usual place of employment' and as such, have added some additional wording into the notes for this criterion. We are of the view that a person's usual place of employment is the place where they spend the majority of their working time. We note the PSB joint guidance uses this definition. However, we do not think it is appropriate for Ofcom to go as far as the PSB joint guidance in attempting to define further what 'a majority of their time' means.
- 3.56 With regards to the stated aim of the criterion, since we received some comments of support for it, and believe we have already addressed points relating to operational independence within the notes of the criterion, we have decided to go ahead with the addition as proposed in the Consultation.

Final criterion**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 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'), 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'.*

Changes to the criteria: Production budget⁶⁹

What we proposed

- 3.57 We proposed to make two specific changes to the production budget criterion in response to stakeholders' requests for clarification, which we received in stakeholder events and meetings as well as in written responses to our CFE. Firstly, we proposed to alter the wording of the criterion to make it clear that the 70% should be counted against the entire production budget (including any funding from third parties). Secondly, we proposed that any production fee should be excluded from the budget when calculating whether the 70% has been met or not, since our view is that the production fee is the profit element of a production and that this income should be treated differently to programme production expenditure. We were of the view that these changes would bring greater consistency to the application of this criterion. We also set out in the Consultation document that we were not planning to exclude international production costs when calculating whether the relevant thresholds had been met. We also proposed to provide some explanatory notes to address some specific questions raised by stakeholders about this criterion.
- 3.58 The aim of our proposed changes to this criterion was to provide a more accurate reflection of what is spent on a production. This should lead to a more genuine and transparent attribution of spend to the nations and regions, which we believe will have a positive impact on the local production ecology.

Summary of comments and our decision

Calculated against the entire production budget

What respondents said

- 3.59 Of the stakeholders who commented on this proposal, all agreed that including the entire production budget in calculations is the most logical approach.⁷⁰ The BBC, ITV and Channel 4 all stated that our proposal was in line with their current practice, while Channel 5 simply agreed that third-party spend should be included.
- 3.60 The BBC further stated however, that it would not be appropriate to count expenses related to delivery for audiences outside of the UK as spend, whether co-funded or not, which it said is reflected in the PSB joint guidance.⁷¹ One respondent also suggested

⁶⁹ When we talk about the changes we are making to the production budget, we are referring to changes to the production budget criterion which applies on a programme by programme basis, rather than changes to the way in which the PSBs calculate their overall delivery against their spend quotas.

⁷⁰ [Advisory Committee for Northern Ireland](#), p.1; [The BBC](#), pp.17-18; [BECTU](#), p.3; [Channel 4](#), p.14, [Indie Club](#), p.13-14, [Name withheld 1](#), pp.2-3; [The Welsh Government](#), p.3; [Advisory Committee for Wales](#), p.2; [ITV](#), p.9; [Viacom International Media Networks/Channel 5](#), p.4; [Name withheld 2](#), pp.8-9

⁷¹ [The BBC](#), pp.17-18

that third party funding from international co-producers should not be included in calculations.⁷²

Our decision

- 3.61 We agree with the BBC's point that spend related to the delivery of programmes for audiences outside of the UK should not be included in calculations. We consider that such costs, for example those associated with reversioning a programme for a non-UK audience, should be considered as entirely separate to costs which go towards the production of a programme for network TV in the UK. We do not consider it necessary to add anything into the Guidance on this matter as we believe the Guidance and the quotas clearly relate to the production of first-run originations for network television in the UK.
- 3.62 In relation to whether third-party funding from foreign co-producers should be counted, our view is that as long as the expenditure is incurred within the UK, it does not matter where the third-party funding comes from.
- 3.63 Considering the unanimous agreement with this proposal overall, and the fact that co-productions and third-party funding are likely to continue becoming more common place in production financing, we have decided to make this change to the criterion.

Production fee

What respondents said

- 3.64 A number of respondents disagreed with our proposal to clarify that the production fee should be excluded from the budget criterion, particularly those based in the nations and regions.⁷³ They argued that for companies based in the nations and regions, the fee makes an important contribution to supporting the local economy.⁷⁴ Some respondents also stated that ultimately, the production fee often gets re-invested locally, for example on the management and operation of the regional base itself, on the development of further programming, or even on the production itself.⁷⁵
- 3.65 Respondents including the Indie Club, also argued that the exclusion may benefit London-based companies, as excluding the production fee reduces the overall value of production budget against which the 70% figure is calculated.⁷⁶ Tern stated that the proposal will benefit companies without a substantive base in the nations and regions seeking to make a regional production but retain the production fee in London.⁷⁷

⁷² [Name withheld 1](#), pp.2-3

⁷³ [Advisory Committee for Scotland](#), p.3; [Viacom International Media Networks/Channel 5](#), p.5; [Indie Club](#), pp.13-14; [The Scottish Government](#), p.6; [The Welsh Government](#) p.4; [Name withheld 1](#), pp.2-3; [STV](#), p.4; [Tern](#), p.2; [Name withheld 2](#), pp.8-10

⁷⁴ [The Welsh Government](#) p.4; [Name withheld 2](#), pp.9-10; [Advisory Committee for Scotland](#), p.3; [Tern](#), p.2

⁷⁵ [Viacom International Media Networks/Channel 5](#), p.3; [Name withheld 1](#), p.3; [Name withheld 2](#), pp.9-10

⁷⁶ [Indie Club](#), pp.13-14; [Name withheld 2](#), p.8

⁷⁷ [Tern response](#), p.2

- 3.66 However, other respondents, particularly the PSBs, agreed with the exclusion, recognising that it would be a clean way to achieve clarity and consistency in application. Channel 4, ITV and STV confirmed that the proposal was in line with their current practice.⁷⁸ While agreeing the fee should be excluded, BBC, STV and Pact were, however, sympathetic towards companies based in the nations and regions who feel their production fee is being invested locally.⁷⁹ They called for some flexibility, for example allowing a company to count the fee if it satisfies the substantive base criterion, or if a company can demonstrate that the fee is contributing to the creative economy in the nation or region, which is in line with the PSB joint guidance.

Our decision

- 3.67 We remain of the view that, fundamentally, the production fee is the profit from, and not expenditure on, the programme in question. We acknowledge that there will be instances where the production fee is genuinely used and reinvested in the local creative economy, therefore contributing to that area's sustainability; however, in these cases, that money has still not directly been spent on the production in question. We are also anecdotally aware of the fact that production companies use the fee in different ways, and there are cases where the fee flows back to companies headquartered in London.
- 3.68 As such, to ensure a consistent approach, and a level playing field for all companies, we have decided to go ahead in clarifying that the production fee should be excluded from the production budget.
- 3.69 However, as outlined in the Consultation, we remain of the view that if a production goes over-budget and the company chooses to use the production fee to fund the increased costs, it then clearly becomes expenditure, and it would thus be appropriate to count this spend towards the production budget and, where spent outside the M25, the 70% calculation. We have decided to make this clear within the Guidance.

International expenditure

What respondents said

- 3.70 The Welsh Government agreed with our clarification that international spend should not be excluded from the production budget calculation, stating that excluding it would potentially allow programmes filmed mainly abroad to count towards the regional production quotas.⁸⁰

⁷⁸ [Channel 4](#), p.14; [ITV](#), p.9 and [STV](#), p.4

⁷⁹ [The BBC](#), p.17; [STV](#), p.4; [Pact](#), p.7

⁸⁰ [The Welsh Government](#), pp.3-4

- 3.71 Most of the PSBs, however, disagreed and were of the view that as long as a production is not classified as ‘made outside of the UK’⁸¹, then any international spend should be excluded from the production budget calculation entirely.⁸²
- 3.72 The BBC and ITV argued that international costs can represent a large proportion of production spend, making the criterion very hard to meet, and that such expenses should not prevent a production from qualifying.⁸³ The BBC suggested this could be addressed by ‘neutralising’ international spend, by either classifying it as regional spend or by excluding it from calculations altogether. It acknowledged that a problem with treating international costs as regional spend is that such spend is unlikely to benefit production in the UK or the local economy, and so it instead proposed we should change our Guidance so that international spend is excluded entirely. However, no evidence was provided as to how many productions would be impacted by the exclusion.
- 3.73 Channel 4 also felt that international spend should be excluded. It gave an example of a drama production where the majority of the UK spend was regional but due to international expenses (that were not significant enough for it to be deemed an international production) it missed out on qualifying as a regional production. It argued that given the absolute value of spend on drama, this production had much higher regional spend than many productions which did qualify, and that these types of production are not recognised under the current system.⁸⁴
- 3.74 ITV, the BBC and Tern also raised concerns that the proposal may give a competitive advantage to London-based companies and excluding international spend would ensure that producers based in the nations and regions, who are just as internationally focused as London-based companies, can compete on a level playing field for commissions with an element of international filming.⁸⁵
- 3.75 Pact stated that it understood why we have chosen not to exclude international spend, but was concerned about the possible risk of disincentivising international filming to the detriment of the sector’s future development and it called for some flexibility in borderline cases.⁸⁶ It also mentioned Ofcom’s existing international production criteria (see footnote 81) which determines whether a programme was made outside of the UK, and therefore should be excluded from the quota calculations altogether, and

⁸¹ Ofcom has existing international production criteria, which the PSBs have applied since 2005/2006. The criteria were introduced to ensure that programmes with a significant element of international production are not counted for the purposes of the quota calculations which only relate to programmes made in the UK. We are going to include the criteria within an annex to the updated Guidance

⁸² [The BBC](#), p.21-22; [ITV](#), p.10; [Channel 4](#), p.13-14; [Viacom International Media Networks/Channel 5](#), pp.5-6

⁸³ [The BBC](#), pp.21; [ITV](#), p.10

⁸⁴ [Channel 4](#), p.14

⁸⁵ [The BBC](#), p.19; [ITV](#), p.10; [Tern](#), p.2

⁸⁶ [Pact](#), p.7

suggested that we open up the criteria for consultation.⁸⁷ The BBC and Channel 5 said it would like to see the international production criteria included in the Guidance.⁸⁸

- 3.76 Finally, the BBC, Channel 4, Channel 5 and Pact all argued that under our proposal, international spend will essentially be allocated as London spend, which they believed did not make sense. They argued that this misrepresents the nature of the production and penalises companies whose productions require international spend.⁸⁹

Our decision

- 3.77 We remain of the view that to exclude international production costs when calculating whether the production budget criterion has been met would undermine the policy intent of encouraging greater spend on TV production outside of London within the UK. As stated in the Consultation, removing international spend would enable productions with minimal regional spend to qualify as a regional production. The flexibility of having to meet two out of three criteria also means that productions with some international spend are still able to qualify as regional productions even if they don't satisfy the spend criterion.
- 3.78 In relation to the existing international production criteria, we agree that greater clarity around the definition of an international production and adding the relevant criteria to the Guidance would be useful. The criteria have been included within an annex to the Guidance for reference. They were not part of the scope of this review.
- 3.79 In relation to the point put forward that including international spend in the production budget essentially means it is allocated as 'London spend', there appears to be some confusion. In satisfying the budget criterion, spend either qualifies as 'regional', or it does not; it is not, as such, allocated to London. If the production qualifies as a regional production, as stated in the Guidance, the PSB's spend on that particular production is allocated in full to the region where the production is assigned to, meaning zero spend is allocated to London.⁹⁰
- 3.80 In conclusion, we remain of the view that international spend should not be excluded from the production budget calculation, that is, it should be included in the calculation. We will, however, include the existing international criteria within an annex to the Guidance to make it clear when a production qualifies as international, and is therefore excluded from the regional production quotas as a whole.

Explanatory notes

- 3.81 The notes we proposed for the production budget criterion covered the following areas:
- **How costs associated with travel should be allocated:** We proposed that costs spent on transporting talent/equipment between London and the regions (or

⁸⁷ [Pact](#), p.7

⁸⁸ [Viacom International Media Networks/Channel 5](#), pp.5-6; [The BBC](#), p.25

⁸⁹ [The BBC](#), p.21; [Channel 4](#), pp.13-14; [Channel 5](#), pp.6; [Pact](#), p.7

⁹⁰ Paragraph 7 of the [Guidance](#)

outside the UK) would not be appropriately classified as regional costs, as it is unlikely that these costs would contribute to the creative economy in the region. However, we proposed that costs spent on local travel would be appropriately classified as regional costs, as we consider that these costs typically would contribute to the local creative economy.

- **How overhead costs should be allocated:** We proposed that overhead costs associated with keeping a substantive base in the nations and regions operational should be classified as regional spend. Where a production is made by a London-based company with no substantive base, the overhead costs should be classified as London-based expenditure. Where there is a substantive base but a production company has multiple offices across the UK, we noted that we would typically expect overhead costs to be pro-rated by location.
- **How spend abroad should be treated:** We proposed that spend outside the UK should be allocated as part of the production budget but not classified as regional spend, given that it does not contribute to the creative economy in a region. However, we noted that it would be appropriate to count costs associated with paying talent based in the nations and regions of the UK while working abroad on the production in question. Since our position on how spend outside the UK should be treated is covered in the section on international spend above (from paragraph 3.70), we do not set out any more information on this note here. We will go ahead with our notes on the inclusion of spend associated with paying talent based in the nations and regions of the UK while working abroad on a production as we received no objections to this.

What respondents said

- 3.82 **How costs associated with travel should be allocated:** The majority of the PSBs and Pact disagreed with our interpretation that only 'local travel' can be counted as regional, considering this to be too restrictive.⁹¹ Pact, ITV and the BBC gave examples where they believed our notes to be unfair or counter intuitive, where they argued such costs should be allowed to be counted as regional.⁹² One of Pact's examples was where an employee based in the nations and regions travels to London to take part in an edit, or training, which it argued is clearly benefitting regional talent and production. Channel 5 stated that travel costs can contribute directly to the operational logistics of making a regional production and therefore should be included.⁹³ The BBC, Channel 4 and Channel 5 all preferred the PSB joint guidance over ours in relation to travel costs.⁹⁴ ITV and Channel 4 also raised concerns about the burden our proposal would place on production companies in having to analyse and categorise such costs.⁹⁵ The BBC worried

⁹¹ [The BBC](#), pp.18-20; [ITV](#), pp.9-10; [Channel 4](#), pp.14-15; [Viacom International Media Networks/Channel 5](#), p.5; [Pact](#), p.8

⁹² [Pact](#), p.8; [ITV](#), p.9; [The BBC](#), p.18

⁹³ [Viacom International Media Networks/Channel 5](#), p.5

⁹⁴ [Viacom International Media Networks/Channel 5](#), p.5; [Channel 4](#), p.14; [The BBC](#), p.20

⁹⁵ [ITV](#), p.9; [Channel 4](#), p.14

that our proposal may inhibit regional companies from bidding for commissions that involve on-location filming.⁹⁶ A suggestion was made by ITV, which was in line with its current practice, where half the cost of any travel to or from London, or countries outside the UK can be counted as regional. It said it endeavours to use local transport firms, even where journeys begin or terminate in London and that preventing this spend from being counted may result in spend moving back into London if it proved cheaper or more operationally efficient.⁹⁷

- 3.83 **How overhead costs should be allocated:** Some respondents agreed with the notes but wanted us to go slightly further. The Indie Club said that we should explicitly clarify that overheads in London cannot be counted as regional spend, while the BBC and Channel 5 called for more information as to what we mean by allocating costs ‘pro-rata’.⁹⁸ The Scottish Government believed that we should monitor London-based companies to ensure they are not allocating corporate costs to the nations and regions which are then counted towards the quotas.⁹⁹ ITV disagreed with the notes, it argued that when a production does not qualify for the substantive base criterion, this does not necessarily mean that no overhead costs are incurred in the nations and regions. It used an example that ITV productions in London may well use resources in ITV’s regional offices in Manchester, and that the associated costs are genuinely incurred in the nations and regions.¹⁰⁰

Our decision

- 3.84 **How costs associated with travel should be allocated:** The examples that Pact, ITV and the BBC provided in relation to travel costs, to demonstrate where they considered our notes to be too restrictive, were useful for our understanding. We asked some of the PSBs for some more information about how such costs are allocated in various scenarios. In considering the information received, as well as responses on the topic, we acknowledge that there are certain examples, such as transporting talent to a country outside the UK and back again, or transporting talent from the nations and regions to London and back again where the costs associated can be reasonably considered to benefit regional talent and production. In considering this, as well as the policy intent, we have decided to change the notes we proposed in the Consultation. We have expanded on our previous stipulation that only the costs of ‘local travel’ within the UK outside of London can be counted as regional spend. Our notes now explain that the full cost of travel (whether one-way or return) can be allocated as regional spend if the starting point is in the nations and regions. This allows for the costs associated with talent travelling from the nations and regions to London or to a filming location abroad and back again to be counted, as well as any travel costs incurred outside of London within the UK.

⁹⁶ [The BBC](#), p.19

⁹⁷ [ITV](#), pp.9

⁹⁸ [Indie Club](#), p.14; [The BBC](#), p.20; [Viacom International Media Networks/Channel 5](#), p.6

⁹⁹ [The Scottish Government](#), p.6

¹⁰⁰ [ITV](#), p.10

- 3.85 **How overhead costs should be allocated:** As ITV pointed out, there may be instances where a production genuinely incurs overhead costs in the nations and regions despite not having satisfied the substantive base criterion. We agree that it would be fair to count such costs as regional spend and we have therefore decided to simplify our notes accordingly to make clear that overheads should be reasonably apportioned to the location to which each overhead relates (i.e. the office or base which they help to maintain), which might be the substantive base and/or other production bases, provided they have been used for the production in question. We have also decided to simplify our proposed notes in relation to allocating costs ‘pro-rata’. We will not use this term and instead, our notes explain that where a production has multiple offices across the UK, and overhead costs are split between these offices (possibly including London), we would expect a company to take a ‘reasonable approach’ to allocating such costs. We do not believe it is necessary for us to provide more specific instructions on how to make such calculations. In terms of the Indie Club’s request that we make it explicit that London overheads cannot be counted, we agree that there is merit in providing extra clarity here and have added this clarification to our simplified notes for overheads. We also believe that this extra clarity will give some assurance to the Scottish Government, who suggested we monitor London-based companies to ensure they are not counting corporate costs towards the nations and regions. We cannot look at every title in detail, and it is for the broadcasters to ensure that the criteria have been met, but we will keep its suggestion in mind when considering spot checks (our compliance and enforcement processes are set out in Section 4).

Additional comments

What respondents said

- 3.86 Beyond our specific proposals in the Consultation, the BBC also suggested that considering the purpose of this criterion is to recognise the money spent on a regional production, the term “spend” is more appropriate than “budget”.¹⁰¹ Making it clear that costs should be counted as actual spend on the production rather than budgeted spend. It noted that this approach also addresses that the production fee can be counted in the production budget calculation if it ends up being spent on the production in question.
- 3.87 ITV also suggested two changes to the wording of the overarching aim of the production budget criterion, the words in question are underlined: “...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.”
- 3.88 It argued that it is the production itself that must satisfy the criteria and the use of ‘supplier’ could refer to companies used by the producers. It therefore suggested we change ‘supplier’ to ‘production company’.¹⁰² It also argued that the economic benefits

¹⁰¹ The BBC, p.16

¹⁰² ITV, p.8

of a production are not limited to the ‘creative economy’ and that sectors outside of the creative economy such as transport, catering, security, legal and finance account for a significant volume of regional spend and are a legitimate and necessary part of programme expenditure. It therefore suggested replacing ‘creative’ with local’.

- 3.89 Channel 5 noted that it thought there was a mistake in the proposed new Guidance at paragraph 7 which explained that third-party funding was excluded, yet under the production budget criterion third-party funding is included.¹⁰³ ITV also suggested that we provide more clarity here.¹⁰⁴
- 3.90 The ACNI raised a concern that a significant portion of the production budget considered to be spent in Northern Ireland actually flows back to London. While acknowledging that this could be difficult to define and measure, the ACNI suggested that improvements in the Guidance, along with improved reporting and a more prominent complaints process would help set clearer standards to which the PSBs could ultimately be held accountable.¹⁰⁵

Our decision

- 3.91 In relation to the BBC’s suggestion to use the term “spend” rather than “budget”, we agree with the reasons outlined in its response (as set out above) and we have decided to make this change to our Guidance. From this point forwards, we will refer to the criterion as the ‘production spend criterion’.
- 3.92 We also agree with the reasoning in ITV’s response for changes to the terms used when explaining the aim of the production budget criteria. As such, we have decided to change ‘supplier’ to ‘production’ since the focus of the criterion is on the production itself, rather than the company making it. We have also changed the term ‘creative’ to ‘local’ given the wider benefits meeting the criterion can deliver.
- 3.93 With regards to Channel 5’s suggestion that there is a mistake in the Guidance in relation to third-party spend, as well as ITV’s calls for more clarity, we would note that paragraph 7 of the Guidance (paragraph 8 in the updated Guidance) is distinct from the production spend criterion and aims to explain how the three criteria should be used together in relation to the PSBs’ expenditure quotas. The PSBs should first determine whether a title has met the criteria to qualify as a regional production. In doing so, and working out whether the production spend criterion has been met, as explained earlier, third-party funding *should* be included. However, when the PSBs are then assessing their delivery against their overall expenditure quota, they should only be basing this on their own expenditure, *excluding* any third-party funding. We have made some small changes to the wording within the Guidance to make this clearer.

¹⁰³ [Viacom International Media Networks/Channel 5](#), p.6

¹⁰⁴ [ITV](#), p.9

¹⁰⁵ [Advisory Committee for Northern Ireland](#), pp.3-4

- 3.94 We believe our changes to the production fee and our clarifications about which expenditure should count as regional spend should address the concerns about money flowing back to London raised by the ACNI.

Final criterion

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, 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.*

Changes to the criteria: Off-screen talent

What we proposed

- 3.95 We did not propose to make any changes to the off-screen talent criterion, and thus this criterion would remain the same. While we did consider a range of options, we were of the view that such changes could have a negative impact by restricting the range of opportunities available to talent based in the nations and regions. With regards to on-screen talent, in the Consultation we also noted that we were not minded to change either the off-screen talent criterion or production spend criterion to include on-screen talent, since the often significant cost of on-screen talent could lead to the delivery of the quotas being skewed. We also felt that it would not be proportionate to introduce an obligation to require the PSBs to hold local casting sessions in the locality of the production, and that opportunities for on-screen talent would be best dealt with by the PSBs.
- 3.96 We also proposed to provide some explanatory notes to address some specific questions raised by stakeholders about this criterion.

Summary of comments and our decision

Off-screen talent

What respondents said

- 3.97 A number of stakeholders supported our decision not to amend the talent criterion including the ACNI, the BBC, the Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU), Channel 4, Channel 5, the Scottish Government and STV.¹⁰⁶ However, some respondents called for more detail to be included in the Guidance. In the main these suggestions focussed on Ofcom adding further detail rather than changing the criterion itself. Though there were some suggestions that we keep this criterion under review and monitor the 50% level to ensure that it is sufficient for off-screen talent.¹⁰⁷ For example, TAC argued that there are many established companies in Wales and suggested that we consider increasing the 50% threshold in the nations.¹⁰⁸ The Welsh Government felt that it was vital to understand better the talent distribution in order to assess whether the 50% level could be raised in the future and welcomed our consultation proposal to survey producers for this reason (we discuss the survey in more detail in Section 5).¹⁰⁹

¹⁰⁶ [Advisory Committee for Northern Ireland](#), p.4; [The BBC](#), p.22; [BECTU](#), p.2; [Channel 4](#), p.14; [Viacom International Media Networks/Channel 5](#), p.6; [Scottish Government](#) p.7; [STV](#) p.4

¹⁰⁷ [BECTU](#), p.2; [Indie Club](#), p.20; [Welsh Government](#), p.5; [TAC](#), p.6

¹⁰⁸ [TAC](#), p.6.

¹⁰⁹ [Welsh Government](#), p.5.

- 3.98 A few respondents suggested that we need to ensure that the talent that makes up the 50% level is filled with a variety of roles at different levels of seniority, so that it cannot be solely met through junior roles. Directors UK suggested that we should require the PSBs to monitor and report on the specific roles that make up the talent to meet this criterion, this it argued will help to develop talent in key production roles in the nations and regions.¹¹⁰ Similarly, the Indie Club recommended that the seniority and level of the talent should be incorporated into the wording of the criterion so that PSBs are required to employ talent outside of London into senior production roles to help the production sector outside of London to develop further. It also suggested that the aim of the criterion should be updated to explain that its objective is to ensure genuine job opportunities in a range of different roles in the nations and regions.¹¹¹
- 3.99 Similar to comments raised in relation to the substantive base criterion, a number of respondents suggested that Ofcom should provide further guidance on what ‘usual place of employment’ means to offer greater clarity. For example, Channel 4 explained that this is often a contentious issue and believed Ofcom should define this term to provide further clarity and guidance in addition to the PSB joint guidance.¹¹² Similarly Pact expressed support for the detail provided in the PSB joint guidance but would welcome Ofcom to also include these definitions to provide further clarity. To help define ‘usual place of employment’ Tern reiterated its point made in the CFE, that the ‘place of paying tax’ would be better for Scotland.¹¹³
- 3.100 For consistency the Welsh Government suggested that the talent criterion should stipulate that the talent working on a production should have their usual place of employment outside of the M25 *prior to their employment on the production*.¹¹⁴
- 3.101 The Indie Club also suggested additional requirements for the talent criterion to help deliver job-creation in the area of the substantive base, and prevent regional talent from having to travel to London all of the time. It argued that when the substantive base criterion was being used, a minimum of 25% of the off-screen talent should have their usual place of employment within the macro-region of the claimed substantive base.¹¹⁵ The Indie Club, along with some other respondents, also referred to the practice of hiring nations and regions talent to work in London in order to qualify as regional and provided examples of job adverts as evidence.¹¹⁶

¹¹⁰ [Directors UK](#), pp. 4-8

¹¹¹ [Indie Club](#), pp. 15-17

¹¹² [Channel 4](#), p.15

¹¹³ [Tern](#), p.2

¹¹⁴ [Welsh Government](#), p.5

¹¹⁵ [Indie Club](#), pp. 15-17

¹¹⁶ [Indie Club](#), p.18; [Name withheld 2](#), p.15

Our decision

- 3.102 At this stage we do not think it is appropriate to increase the level of this criterion. We believe that the existing level affords the necessary flexibility for London-based talent to be used in instances where it is not possible to fill roles locally.
- 3.103 Whilst we do not think it is appropriate for Ofcom to stipulate how the PSBs deliver the talent criterion, we do recognise the importance of the regime in developing talent at a range of levels outside of London. We do not believe it would be practical to require that every individual production use nations and regions talent at all levels. We recognise that in some cases, for instance when a new genre is being introduced into an area, it is necessary for there to be the flexibility to enable senior talent from London to be employed on the production to help train and develop talent. However, we do believe it is important that the regime as a whole seeks to utilise and to offer opportunities for talent at all levels in the nations and regions. As such we have decided to update the wording in the ‘aim’ of the off-screen talent criterion within the Guidance as follows: *“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”*.
- 3.104 As explained in relation to substantive base, we do not believe it is practical to use a person’s tax status to determine their usual place of employment (see paragraph 3.53). However, we do agree with respondents that we could be clearer regarding what we mean by the term ‘usual place of employment’ and as such, have added some additional wording into the notes for this criterion. As explained at paragraph 3.55, we agree with the definition in the PSB joint guidance which explains that a person’s usual place of employment is the place where they spend the majority of their working time and will adopt this. However, we do not think it is appropriate for Ofcom to go as far as the PSB joint guidance in attempting to define further what ‘a majority of their time’ means.
- 3.105 We considered the Welsh Government’s suggestion in paragraph 3.100 to make the talent criterion consistent and decided that this change could be too restrictive. While we expect that most talent will have their usual place of employment established prior to employment on a production we would not want to prevent talent from moving in the instance someone genuinely wanted to move.
- 3.106 The flexibility built into the regime as a whole, and within this criterion, allows for production companies to diversify and it encourages opportunities for a wide range of talent across the UK. For example, the criterion currently allows for talent in the nations and regions to work both in the nation or macro-region where they are based, or in other locations which can be important in helping them to develop skills in new areas and genres. Maintaining this flexibility is important so that the regime does not restrict opportunities for talent or limit production companies. We believe the suggestions presented in paragraph 3.101 to restrict talent to work in certain geographic locations would be too granular and would have the potential to restrict this flexibility and

opportunity for talent. We have therefore decided not to incorporate these suggestions into the Guidance.

On-screen talent

What respondents said

- 3.107 A number of respondents were disappointed that we had not proposed to change the Guidance to include provision of opportunities for on-screen talent. This included Equity who considered there to be limited opportunities for local talent and believes the PSBs should increase the opportunities for regional on-screen talent. While appreciating our concerns about the costs of on-screen talent potentially skewing the quotas, Equity suggested there are other ways to ‘open up’ opportunities for local talent. This, it argued, could be achieved through a points-based system or by including an obligation to undertake at least one casting session, or a set of auditions in the nation or region a programme is being made.¹¹⁷
- 3.108 Other respondents argued in support of placing an obligation on PSBs to hold local casting. The Culture, Welsh Language and Communications Committee suggested that this would increase the opportunities for creative talent to thrive in Wales and improve public service broadcasting.¹¹⁸ In addition, we received 64 similarly worded responses from individuals regarding on-screen talent. These responses also expressed disappointment with our decision not to include on-screen talent in the criteria and Guidance. Respondents explained the importance of local talent for regional creative economies as well as the benefits of local casting, such as opening up opportunities to regional performers and increasing the diversity and range of talent.¹¹⁹
- 3.109 Equity were also disappointed that we did not include our comments about local on-screen talent being an important part of the industry from the Consultation document in the Guidance itself.¹²⁰ So that the importance of local casting does not get lost, Equity argued that a reference, beyond just excluding on-screen talent, should be made in the Guidance. Similarly, the Welsh Government also suggested that Ofcom’s comments on local casting sessions should be included as a summary in an annex to the Guidance, to help capture these points so that broadcasters can be mindful of them for future productions.¹²¹
- 3.110 Further to these points, Channel 4 requested that Ofcom consider how we categorise non-speaking roles within this criterion. It explained that while this talent is on-screen they are often sourced locally and therefore contribute to the local economy and production ecology of the region.¹²²

¹¹⁷ [Equity](#), p.1

¹¹⁸ [Culture, Welsh Language and Communications Committee](#), pp.1-2; [Scottish Government](#), p.45

¹¹⁹ [On Screen talent response](#)

¹²⁰ [Review of Regional Production and Programming Guidance: Consultation, December 2018](#) p.37

¹²¹ [Welsh Government](#), p.5

¹²² [Channel 4](#), p.14

Our decision

- 3.111 We remain of the view that on-screen talent should be excluded from both the off-screen talent and the production spend criteria. This is regardless of the type of role the on-screen talent holds, whether speaking or not. As set out in the Consultation, as well as the fact that the costs of on-screen talent have the potential to skew the quotas, we are also mindful not to broaden the terms of the criterion and dilute the opportunities available for off-screen talent.¹²³ We also remain of the view that it would not be proportionate for the regulator to impose specific obligations regarding the locations of castings.
- 3.112 However, we appreciate the concerns raised by stakeholders about there being no reference to on-screen talent and why it has been excluded from the criterion in the Guidance. We have therefore decided to include the following text in the revised Guidance in the notes for this criterion to explain our position to users of the Guidance: *“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)”*.

Explanatory notes

- 3.113 The notes we proposed for the off-screen talent criterion covered the following areas:
- **Whether production talent means everyone on the payroll:** We proposed that we would expect production companies to only assign as regional spend the costs of talent generally recognised as part of the creative programme making process, but recognised that this will, in some instances, require an element of judgment.
 - **Whether talent hired through a studio based outside the M25 counts as regional talent:** We explained that regardless of how the talent is hired, the criterion specifies that freelance talent must live outside the M25.

What respondents said

- 3.114 **Whether production talent means everyone on the payroll:** Of those who responded to the explanatory notes about this criterion, this note generated the greatest number of comments. While some respondents agreed with our approach to restricting the definition of production talent to creative roles¹²⁴, the majority of the PSBs and Pact took issue with this suggestion and recommended we adopt the wording used in the PSB joint guidance. Arguments made against the approach focussed on the definition being too rigid with concerns of the term as too restrictive and being interpreted too

¹²³ [Review of Regional Production and Programming Guidance: Consultation, December 2018](#) p.37

¹²⁴ [Directors UK](#), p.7; [STV](#), p.4,

narrowly. They also argued that each role involved in a production is essential for its success, and that all roles on a production offer value and form a part of the TV production industry in the nations and regions.¹²⁵ The ACW agreed with our approach but accepted that it may not always be practical to differentiate between the creative talent and peripheral roles.¹²⁶

- 3.115 **Whether talent hired through a studio based outside the M25 counts as regional talent:** The ACNI and Directors UK welcomed the clarity provided by this note.¹²⁷

Our decision

- 3.116 **Whether production talent means everyone on the payroll:** Following the feedback from stakeholders we recognise that the use of the term ‘creative roles’ was unclear and could be too restrictive. Our intention was to make clear that service roles and peripheral roles such as drivers and cleaners should not be included. As such, we have decided to update our note in the Guidance as follows: *“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 companies should use their judgement, keeping in mind the policy intent.”*
- 3.117 **Whether talent hired through a studio based outside the M25 counts as regional talent:** Given the positive comments we received on this note, we have decided to go ahead with including this within Guidance.

Additional comments

What respondents said

- 3.118 The only other comment we received in relation to this criterion was based on our proposed addition of the aim of the criterion to the Guidance. Pact supported this additional clarification and considered that the fulfilment of the criterion should encourage job opportunities in the nations and regions and attract talent to those areas.¹²⁸

Our decision

- 3.119 Given this support, we have decided to add additional text on the aim of the criterion into the Guidance. As explained earlier (paragraph 3.103), we have added some additional wording into the aim to recognise the importance of the criterion offering opportunities at all levels of seniority.

¹²⁵ BBC, p.23; Channel 4, pp.14 -15; Viacom International Media Networks/Channel 5, p.6; ITV, p.11; Pact, p.11

¹²⁶ Advisory Committee for Wales, p.3

¹²⁷ Advisory Committee for Northern Ireland, p.4; Directors UK, pp.7-8

¹²⁸ Pact, p.5

Final criterion**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).

Explanatory notes overall

What we proposed

- 3.120 In order to improve clarity and encourage good practice, while at the same time avoiding negatively impacting on the flexibility of the criteria, we also proposed introducing an annex to the Guidance containing explanatory notes to support each of the criteria. The proposed explanatory notes were set out at Annex 7 to the Consultation¹²⁹ and we set out more detail above regarding what the notes for each criterion covered.

¹²⁹ https://www.ofcom.org.uk/data/assets/pdf_file/0015/130704/Annex-7-Proposed-new-Guidance-and-explanatory-notes.pdf p.7-10

Summary of comments

- 3.121 Many respondents were generally supportive of the introduction of explanatory notes and the additional clarity they would provide, helping to ensure that the Guidance is correctly applied. This included the ACNI, the Welsh Government, and Directors UK.¹³⁰
- 3.122 However, in light of the BBC, ITV, Channel 4 and Channel 5 publishing their own joint best-practice guidance for producers in December 2018, some respondents called into question the value of the explanatory notes, and some, including the BBC and ITV, were of the view that our notes should not be introduced.¹³¹ Pact questioned whether there might be a way to amalgamate the explanatory notes with the PSB joint guidance, as it would be more straightforward for producers to have one set of guidance.¹³² Channel 4 acknowledged that where contentious questions occur around interpretation there is value in being able to refer to an Ofcom document; although it suggested an alternative approach could be for Ofcom to publish a separate, more extensive explanatory document which aligns as far as possible with the PSB joint guidance and could be updated over time.¹³³ ITV raised questions regarding the legal status of the notes given they were in an annex of the Guidance, while Channel 5 felt that rather than having the notes in an annex, it would be more helpful to incorporate them into the Guidance itself.¹³⁴

Our decision

- 3.123 As noted in the Consultation document, the aim of the explanatory notes was to address areas of confusion and concern, while ensuring that the criteria retained a certain amount of flexibility to be interpreted as befits the individual circumstances of each production. While we note that the PSBs have produced their own guidance for production companies, we do not offer to incorporate this within our own Guidance, which covers all of the matters on which we consider it is appropriate to give guidance. It is for the PSBs to determine how best to meet their licence obligations in light of our Guidance.
- 3.124 To avoid any confusion as to the status of the explanatory notes, we have decided to incorporate them into the Guidance itself rather than having a separate annex, as per Channel 5's suggestion. We have added a new sub-section underneath each criterion which outlines any relevant notes to assist users in applying them. Since the explanatory notes we consulted on were presented in the form of questions and answers, we have had to change the wording and style of some of the notes in moving them into the front section of the Guidance; however our position on the substance of

¹³⁰ [Advisory Committee for Northern Ireland](#), pp.3-4; [The Welsh Government](#), pp.3-5; [Directors UK](#), pp.3-7

¹³¹ [The BBC](#), p.13; [ITV](#), p.4; [Channel 4](#), p.2; [Pact](#), p.11

¹³² [Pact](#), p.11

¹³³ [Channel 4](#), p.5

¹³⁴ [ITV](#), p.4; [Viacom International Media Networks/Channel 5](#), p.8

the notes has not changed, unless otherwise outlined above when we dealt with each of the notes in turn.

Excluding self-promotional content

What we proposed

- 3.125 We proposed that self-promotional content should be excluded from the regional production quota calculations going forwards. This is because we were of the view that the inclusion of such content runs counter to the intent of the obligations, given it is unlikely to create many jobs or development opportunities for production talent. The roles associated with the usual pre-production, filming and director-led editing stages of a standard TV production are likely to be absent and thus such programmes may make a limited contribution to a local creative economy.
- 3.126 Some other types of content, such as repeats and news programming, are already excluded from the quota calculations.¹³⁵

Summary of comments

- 3.127 Of the respondents who commented on our intention to exclude self-promotional content from the quotas, the vast majority agreed, including Channel 4, Channel 5, the Scottish Government, Two Rivers Media, Tern, Directors UK, the Indie Club and TAC.¹³⁶ The BBC, ACNI, and the Welsh Government also agreed, stating that such content does not contribute towards the aims of the regional production regime.¹³⁷
- 3.128 However, ITV was strongly opposed to this proposal as this would mean that it would no longer be able to count *Nightscreen* towards its quotas. It argued that as part of the most recent re-licensing process for the Channel 3 licences (2014), Ofcom did not see a reason to either increase or reduce ITV's obligations, including its regional production obligations, and considered that the obligations and benefits of ITV's PSB licence would broadly be in balance over the course of the next licence period. ITV also argued that in coming to this conclusion Ofcom had taken into account *Nightscreen's* contribution towards its regional production quota at this point. ITV also explained that since the point of re-licensing, competition for audiences has increased, alongside greater regulatory pressure on the types of products which can be advertised on television, both of which have revenue implications for ITV. As such, it stated that Ofcom should not be seeking to add additional costs into its licences as this could hamper its ability to deliver its PSB remit and meet the needs of audiences throughout the UK.¹³⁸

¹³⁵ See paragraph 6 of the [updated Guidance](#) for more information about the types of content excluded from the quotas

¹³⁶ [Channel 4](#), p.15; [Viacom International Media Networks/Channel 5](#), p.6; [The Scottish Government](#), p.7; [Two Rivers Media](#), p.2; [Tern](#), p.3; [Directors UK](#), p.8; [Indie Club](#), p.21; [TAC](#), p.5

¹³⁷ [The BBC](#), p.24; [Advisory Committee for Northern Ireland](#), p.5; and [The Welsh Government](#), p.6

¹³⁸ [ITV](#), pp.11-12

- 3.129 ITV were also of the view that the analysis Ofcom had presented within the Consultation understated the complexity [X] of changes potentially required. It noted the challenges ITV faces in managing multiple, interacting quotas when it is commissioning content, such as when programmes change status mid production (e.g. it becomes apparent during filming that it will not meet a certain quota), or when there are last-minute changes to the schedule. Due to these challenges and the potential uncertainty ITV can face regarding whether it will meet its quotas, it also noted that it works to a compliance buffer, usually of around 2%. With this in mind, if *Nightscreen* had been excluded in 2017, ITV would have needed to [X] instead of the 67 our analysis suggested. In years when ITV would have been compliant without the inclusion of *Nightscreen*, it argued that maintaining a 2% buffer would still have required [X].
- 3.130 [X]
- 3.131 Overall, ITV noted that whilst the future impact of the proposals are hard to accurately quantify, it felt that it was clear that they would represent an additional constraint on ITV versus other multi-channel broadcasters.
- 3.132 While we acknowledge it would be difficult for ITV to quantify the exact impact of our proposals, we requested additional information from ITV to support its claims [X].
- 3.133 [X]

Our decision

- 3.134 We did not receive any comments or evidence from stakeholders who disagreed that self-promotional content does little to contribute towards the policy aim. With regards to the impact this change will have on the broadcasters, as set out in the Consultation, we recognise that, at this time, only ITV would be affected, and we therefore conducted some further analysis of the specific impact on ITV. [X]
- 3.135 [X]
- 3.136 [X]
- 3.137 [X]
- 3.138 [X]
- 3.139 [X]
- 3.140 [X]
- 3.141 In relation to the points raised by ITV about the effect on the value of its licences, ITV currently pays a nominal amount of £10,000 p.a. for each of its licences. We note that at the time of the previous licence renewal in 2014, we conducted a licence valuation in order to determine the financial terms for the forthcoming licence period. We took ITV's submissions into account during this process. ITV did not attribute an opportunity cost to the regional production obligation. In addition, we would note that there are no assurances to licensees that their obligations, or the Guidance Ofcom publishes, will

remain unchanged during the licence period. Ofcom has made changes to licence obligations, in previous instances.

3.142 [X]

3.143 We remain of the view that it is important to ensure that programmes which meet the regional production quotas deliver better the policy intent, and thereby provide more opportunities for companies and talent in the nations and regions. We consider that self-promotional content runs contrary to the policy intent as it is typically unlikely to create many jobs or development opportunities for production talent and thus may make a limited contribution to a local creative economy. We have not been presented with any evidence or suggestions from stakeholders which would lead us to change that view. In relation to the effect of excluding such content, we do not consider that the impact would be as substantial as ITV has suggested, or that it would be so significant as to change our view on the merits of the change. We would expect the impact on ITV to be mitigated. As such, we have decided to exclude such content.

Changes to the allocation categories

What we proposed

3.144 We proposed to make some amendments to the Guidance regarding the allocation of titles to particular nations or macro-regions in order to provide further clarity about how titles should be allocated when the criteria have been met across multiple locations. This included an update to the wording in the Guidance and the inclusion of a table of worked examples to explain better the methodology for allocating titles, and also the introduction of two new allocation categories: ‘Multi-English region’ and ‘Multi-nation outside England’.

Summary of comments

3.145 A number of respondents who commented on this topic were supportive of our proposed changes and clarifications, including Channel 4 and Channel 5.¹³⁹ The ACNI noted that it agreed with the changes to the multi-nation/region allocations and felt that these would mean that the allocation of titles would relate more closely with the place which received the most benefit, which would fit with the policy intent.¹⁴⁰ The Welsh Government also agreed with the new categories, but for consistency and to avoid confusion it felt that the ‘Multi-nation/region’ category should be renamed as ‘Multi-nation/English region’.¹⁴¹

3.146 Pact felt that the proposals for the allocations process were sensible and would help to provide clarity to producers. It acknowledged Ofcom’s decision not to take on board its

¹³⁹ [Channel 4](#), p.15; [Viacom International Media Networks/Channel 5](#), p.7

¹⁴⁰ [Advisory Committee for Northern Ireland](#), p.5

¹⁴¹ [Welsh Government](#), p.6

suggestion raised as part of the CFE to allocate spend on a pro-rata basis since this would not be appropriate or proportionate. It suggested that instead Ofcom should monitor how titles are allocated over time to check for titles which get allocated to a particular nation which only meet the letter and not the spirit of the criteria.¹⁴²

- 3.147 However, some respondents were still unhappy with the way the process works as it allows programmes to be allocated to particular nations and regions on the basis of the substantive base criterion, when very little or none of the money might be spent there or few of the staff are based there.¹⁴³ As such, some called for further reform, including TAC who stated that when a production is being made in Wales, Scotland or Northern Ireland the Guidance should require that all three of the criteria are met in the same nation as the substantive base in order for it to be allocated to that relevant Nation.¹⁴⁴
- 3.148 In addition, the Scottish Government did not think that the substantive base criterion should be relied upon as a default way of allocating titles in cases where a programme has been made across multiple locations. Instead, it believed that a programme should be required to make a minimum level of contribution to a single regional economy, and if it does not meet this level, then it should not qualify as a regional production, regardless of where the substantive base is located.¹⁴⁵
- 3.149 The BBC also wanted us to make further changes to the allocations process. Whilst it was pleased that the changes we proposed would enable multi-English region productions to be counted towards its English regions quota, it still wanted Ofcom to remove the multi-location categories altogether and allow titles in these instances to be allocated to wherever the largest share of the production spend occurred. This would mean that all productions could be allocated to a specific and identifiable nation or region, which it believed would be more helpful as the multi-location categories can obscure the positive impact regional productions have in specific areas.¹⁴⁶

Our decision

- 3.150 As we outlined in the Consultation, requiring titles to be allocated to just one single area of the UK is unlikely to truly reflect how the programme was made. As such, we also recognise why some stakeholders are not completely happy with the allocations process.
- 3.151 The current process allows titles to be allocated to the area where the substantive base criterion was met when the spend and/or off-screen talent criterion have not been fully met in one single location to ensure that, where possible, titles can be allocated to a particular nation or macro-region. While we recognise in these cases very little or none of the production budget and/or expenditure on talent may have occurred in that

¹⁴² [Pact](#), p.9

¹⁴³ [Name withheld 1](#), p.4; [Name withheld 2](#), pp. 11-13

¹⁴⁴ [TAC](#), pp. 5-6

¹⁴⁵ [Scottish Government](#), p.7

¹⁴⁶ [The BBC](#), pp.25-26

location, if an office is genuinely meeting the substantive base criterion in that nation or macro-region then ultimately that production should be making a contribution to that area's creative economy, through the money the production company receives, and also by creating job opportunities at that base through that production. As such, we believe it is legitimate for such titles to be allocated to that relevant nation or region. We do not plan to require certain proportions of the budget or off-screen talent expenditure to be spent in a nation or macro-region in order for it to be allocated there.

3.152 However, in cases where the substantive base criterion has not been met, we do not think it would be appropriate to allocate these titles based on where the majority of the expenditure occurred, as per the BBC's suggestion. In these cases, we believe that it is instead more transparent to use one of the multi-location categories, as this reflects more accurately how the programme was made, i.e. the spend and off-screen talent criteria were met across various nations and/or macro-regions, and it was made by a non-nations and regions producer. Allocating such titles to where the majority of the spend occurred would hide this reality.

3.153 Overall, we remain of the view that the current process, along with the small changes we proposed, is the most transparent and reflective of where programmes are made, whilst being the most proportionate and not unduly complex. As such, we have decided to go ahead with our proposed changes. However, we do agree with the Welsh Government's suggestion and will be renaming the 'Multi-nation/region' category as 'Multi-nation/English region' for clarity and consistency.

Changes to update the Guidance

What we said

3.154 We also need to update the Guidance to reflect the new regulatory regime for the BBC which came into effect on 1 April 2017. As explained in the Consultation, these changes are largely small changes to the text within the Guidance to better explain Ofcom's new role under the new Royal Charter and Framework Agreement.

3.155 We also explained our decision to remove all peripheral information from the Guidance which does not directly assist the user in meeting the regional production obligations. This includes removing any references to policy rationale from future versions of the Guidance.

3.156 We did not need to consult on these changes since they do not impact upon how the Guidance or criteria should be met.

Summary of comments and our decision

3.157 We received a small number of comments on these changes. The Welsh Government highlighted that in the Guidance we sometimes refer to the 'BBC Framework Agreement' and sometimes refer to the 'BBC Agreement'. It suggested that we should

correct this and use the full title throughout to be consistent.¹⁴⁷ We agree with this and have decided to make this change.

- 3.158 The Indie Club and the Scottish Government also commented on our decision to remove references to policy rationale in the Guidance, in particular that this means there is no longer a commitment to review the role of London in regional productions. Both respondents felt it was important that this commitment is not lost from the Guidance.¹⁴⁸ We remain of the view that this type of peripheral information should not be included within the Guidance as it does not directly assist the user in meeting their obligations. We set out more information about our plans to monitor the performance of the sector and the efficacy of the Guidance in Section 5 (see paragraphs 5.6-5.10).

Other points raised by respondents

- 3.159 We also received a number of calls for further changes which do not specifically relate to any of the criteria or proposals outlined above. Some of these were in relation the exclusion of repeats and news programmes from the quotas, the levels of the regional production quotas and introduction of specific national/regional quotas for some of the PSBs, and how well the nations and regions are represented and portrayed on television. As outlined in the Consultation, this review of the Guidance is not a mechanism through which we would seek to consider these issues, and as such are out of scope and not something we will be addressing in this statement.
- 3.160 Beyond these, the BBC thought that we should make it clear that acquisitions are excluded from the quota calculations. Since it is the case that acquisitions are excluded and this was not included in the Guidance before, we have added additional wording to make this clear.
- 3.161 Finally, we note that some stakeholders do not like the use of the term ‘regional productions’ as they feel that this does not reflect the fact that programmes are also made in the UK’s nations. We would reiterate that this term is set out in the Communications Act 2003, and when we use it we are referring to network programmes made in the UK outside of the M25, including in Scotland, Wales and Northern Ireland.

¹⁴⁷ [The Welsh Government](#), pp.2-3

¹⁴⁸ [Indie Club](#), p.21; [The Scottish Government](#), p.3

4. Changes to the compliance and enforcement processes

- 4.1 We acknowledged in the Consultation that improvements to Ofcom's reporting and compliance processes were needed in order to increase stakeholders' trust and confidence in the regime. We set out plans to improve data gathering and reporting by the PSBs, provide more comprehensive data publications, engage in proactive monitoring and articulate the complaints process clearly. Whilst we are not obliged to consult on our internal processes, we said in the Consultation that we would welcome stakeholders' views on any adverse consequences that we had not identified that may occur as a result of our planned changes to our compliance and enforcement processes.¹⁴⁹ We have considered stakeholder responses, and in doing so remain of the view that changes to Ofcom's compliance processes and reporting are necessary. This section summarises and outlines our changes to update the compliance regime.

What we said

Data reporting and publications

- 4.2 We noted in the Consultation that the PSBs have generally not been requesting supporting evidence from suppliers on how the criteria have been met, which may have contributed to inconsistencies in the approach of production companies in fulfilling the criteria. In order to aid our oversight, we set out that we had already informed the PSBs that they will be required to start collecting more information about how productions are meeting the criteria, and to provide us with additional data as part of their annual reporting (see 4.28). We said that we do not consider it to be sufficient to merely rely on a warranty from the supplier, and also encouraged the PSBs to consider whether there is additional data that they should be collecting and retaining internally to aid evidencing compliance.
- 4.3 We noted the general desire amongst stakeholders in response to the CFE to see more data on regional productions published by Ofcom to increase transparency about how the quotas are met. In response to this, we set out our plans to increase the range and volume of data we publish, and to bring together all relevant data, including quota data and data from the Made outside London Titles Register ('the Register'), into a single interactive digital publication that users can interrogate.¹⁵⁰
- 4.4 We currently publish two publications detailing the PSBs' compliance with their regional production quotas. These include a PSB annual compliance pack¹⁵¹, which sets out

¹⁴⁹ See Q10 in Section 5 of our [Consultation](#).

¹⁵⁰ See paragraphs 5.73 to 5.75 in our [Consultation](#).

¹⁵¹ [PSB Annual Compliance Report, 2018](#).

whether PSBs have reported meeting their quotas, and the Register¹⁵², which lists all the programmes PSBs have reported as contributing towards meeting their quotas. The Register also includes information on which of the three criteria the productions have met, the production company, and the geographic area to which it has been allocated.

Complaints and monitoring

- 4.5 We recognised stakeholders’ concerns that there is not currently a clear complaints process for highlighting productions which stakeholders do not believe have been delivered in line with the Guidance. In response, we said that we intended to make the complaints process clear within the Guidance, by adding an explanation of the existing complaints process (including how we will report on outcomes of any complaints) and by providing a clearer route for stakeholders to raise concerns.
- 4.6 Some respondents to our CFE suggested that Ofcom should take a more proactive approach to monitoring the PSBs’ compliance with their obligations. We responded to this by outlining our plan to introduce proactive monitoring to check how the revised Guidance is being interpreted.¹⁵³ We said that this would be achieved through carrying out ad hoc spot checks on the titles submitted as regional productions, where we will request additional information from the PSBs about particular productions to ascertain their regional production credentials.

Summary of comments

- 4.7 The majority of respondents who commented on our compliance and enforcement processes were positive about our changes.¹⁵⁴ There was a general desire amongst stakeholders for Ofcom to collect and publish more information, in line with what we had said we would do in the Consultation. It was felt that more reporting would encourage compliance and accountability¹⁵⁵, whilst publishing more information in an enhanced publication would increase transparency around how the quotas are met.¹⁵⁶
- 4.8 There was also broad support for our plans to add greater clarity around the complaints process.¹⁵⁷ Some stakeholders commented that Ofcom’s approach to complaints had been a clear flaw in the system and expressed a desire for a clear, reasonable process and timelines for raising and resolving complaints.¹⁵⁸ Meanwhile, aside from some of the PSBs, those respondents who commented on our plans around monitoring agreed

¹⁵² [Made outside London programme titles registers](#).

¹⁵³ See paragraphs 5.76 and 5.77 in the [Consultation](#).

¹⁵⁴ [Advisory Committee for Northern Ireland](#), p.5; [Directors UK](#), pp.8-10; [Indie Club](#), p. 22; [Pact](#), pp.9-10; [TAC](#), p.6; [Welsh Government](#), p. 6.

¹⁵⁵ [Pact](#), p. 8; [Directors UK](#), p. 8.

¹⁵⁶ [BBC](#), pp.29-30; [Channel 4](#), p.16; [Indie Club](#), p.22; [Pact](#), p.10; [Scottish Government](#), p.7; [Directors UK](#), p.9.

¹⁵⁷ [Advisory Committee for Northern Ireland](#), p.5; [Advisory Committee for Scotland](#), p.3; [Directors UK](#), p.10; [Pact](#), p.10; [Name Withheld 1](#), p.5; [Name Withheld 2](#), p.13.

¹⁵⁸ [Name Withheld 1](#), p.5; [Name Withheld 2](#), p.13.

with our plans¹⁵⁹, and some put forward suggestions for ways in which we could go further.¹⁶⁰

- 4.9 Some of the PSBs expressed some concerns around what we set out in the Consultation, particularly around retention and provision of information (in relation to both our reporting requirements, and our complaints and monitoring procedures).
- 4.10 For instance, they were divided on whether a warranty is sufficient for compliance. Channel 4 considered that it is, when supported by other measures.¹⁶¹ It warned that requiring broadcasters and production companies to develop new systems would be an unnecessary addition and could erode trust in the relationship. Channel 5 felt that Ofcom should recognise that broadcasters would have to rely on warranties in order to provide information.¹⁶² It suggested that if such information is not forthcoming from the producer, Ofcom should take this into consideration when deciding on appropriate action against the broadcaster.
- 4.11 On the other hand, the BBC agreed with us that relying on a warranty between the broadcaster and production company is not sufficient. It noted that the PSB joint guidance requires producers to retain adequate documentation for six years. As a wider point, the BBC commented that the measures outlined in the PSB joint guidance - around the expectation for production companies to maintain adequate records for six years and a right for broadcasters to audit those records when they consider appropriate - were sufficient to meet Ofcom's concerns. It thought that we should wait to allow these processes to bed down before introducing further reporting requirements or undertaking monitoring.¹⁶³
- 4.12 Some of the PSBs went on to question the appropriateness of requiring production companies to provide commercially sensitive information to them.¹⁶⁴ In particular, Channel 5 believed that supporting information should be held by producers, rather than broadcasters directly, for practical and legal reasons.¹⁶⁵
- 4.13 The BBC and Channel 4 also noted the potential for an increased administrative burden resulting from our planned changes which would require them to maintain more documentation.¹⁶⁶ ITV suggested that the costs of such monitoring may be substantial and noted that Ofcom has not carried out an impact assessment.¹⁶⁷ Channel 5 argued that there should be a limit as to how far back Ofcom can go when requesting information about a production.¹⁶⁸

¹⁵⁹ [Directors UK](#), p.10; [Pact](#), p.10; [Indie Club](#), p.22

¹⁶⁰ [Indie Club](#), p.22

¹⁶¹ [Channel 4](#), p. 16

¹⁶² [Viacom International Media Networks/Channel 5](#), pp. 7-8

¹⁶³ [The BBC](#), pp. 27-30

¹⁶⁴ [The BBC](#), p.31. [ITV](#), p.13; [Channel 4](#), p.16; [Viacom International Media Networks/Channel 5](#), p.7

¹⁶⁵ [Viacom International Media Networks/Channel 5](#), pp. 8-9

¹⁶⁶ [The BBC response](#), pp. 30-31; [Channel 4](#), pp. 16-17

¹⁶⁷ [ITV](#), p.14

¹⁶⁸ [Viacom International Media Networks/Channel 5](#), p.8

- 4.14 Channel 4 and Pact both said that it was important that Ofcom ensures there remains the balance between reaping the benefits of greater reporting versus avoiding unnecessary burden and impacting on commercial sensitivities and data protection issues.¹⁶⁹
- 4.15 Some of the PSBs felt that there was a lack of clarity about the type of data that Ofcom might request and sought further guidance from Ofcom.¹⁷⁰ Following this, Channel 4 and Channel 5 wanted to know more about how spot checks would work in practice.¹⁷¹ Channel 4 supported our plans to undertake spot checks in principle - and noted that it already carries out a number of spot checks each year using a specialist external company - but stressed that workability and proportionality are key.¹⁷²
- 4.16 Some of the PSBs and Pact argued that Ofcom had not yet provided enough information about the complaints and monitoring processes for them to comment.¹⁷³ The BBC, Channel 4 and ITV argued that we should consult on the complaints process and provide full information (although Channel 4 noted that this should only be the case if there are major changes to how Ofcom deals with complaints).¹⁷⁴ Channel 4 also considered that more consultation around our monitoring activity may be required, depending on what types of information we would be planning to ask for.¹⁷⁵
- 4.17 In contrast to the PSBs' hesitancy, some stakeholders called on us to go further. Both the Indie Club and Directors UK wanted more detailed reporting around the use of off-screen talent¹⁷⁶, while various other stakeholders wanted us to collect and publish more granular information.¹⁷⁷ The Indie Club and Pact also called for Ofcom to carry out greater analysis, including around the UK TV production sector and the Register.¹⁷⁸
- 4.18 Among the other substantive comments made, Tern said that our complaints process, as well as our data gathering and reporting, needed to become swifter.¹⁷⁹ Meanwhile, the Indie Club strongly suggested that we offer the option of anonymity if necessary and whistle-blower protection to complainants.¹⁸⁰
- 4.19 Finally, on the subject of enforcement, whilst the Indie Club believed that we should introduce fines for the abuse of regulation¹⁸¹, some stakeholders argued against them on the basis that the cost would likely be set against future programme budgets. Instead, they recommended that the value lost to the quota as a result of the mis-

¹⁶⁹ [Channel 4](#), p. 16; [Pact](#), pp.9-10

¹⁷⁰ [Viacom International Media Networks/Channel 5](#), p. 7; [Channel 4](#), p. 17

¹⁷¹ [Viacom International Media Networks/Channel 5](#), pp. 7- 8; [Channel 4](#), pp. 16-17

¹⁷² [Channel 4](#), p. 16

¹⁷³ [The BBC](#), pp. 28-29 & p. 32; [ITV](#), p. 15; [Pact](#), p.10

¹⁷⁴ [The BBC response](#), pp. 28-29 & p.32; [ITV](#), p. 15; [Channel 4](#), p.17

¹⁷⁵ [Channel 4](#), pp. 16-17

¹⁷⁶ [Indie Club](#), p.22; [Directors UK](#), pp. 8-9

¹⁷⁷ [Scottish Government](#), p.7; [Advisory Committee for Wales](#), p.3; [Pact](#), p.10

¹⁷⁸ [Indie Club](#), p.7 & 22; [Pact](#), p.10

¹⁷⁹ [Tern](#), p.3

¹⁸⁰ [Indie Club](#), p.22

¹⁸¹ [Indie Club](#), p.22

allocation be added back into the out of London commissioning budget for the following year.¹⁸²

Our response

- 4.20 We noted earlier that we are not required to consult on our internal processes. Whilst this is the case, we consider that it would be helpful to set out our response to the points raised by stakeholders. Below we set out our current processes for data collection and publication, complaints and monitoring, as well as our rationale for changes we are making in this area.
- 4.21 As we said in the Consultation, limited oversight of, and accountability for, ensuring that productions have met the definition of a regional production may have contributed to instances of inconsistent practice in applying the Guidance. This, in turn, may have limited the extent to which the regional production regime has delivered the policy intent, and it may have affected stakeholders' confidence in the regime. We continue to believe that a change in approach is required to address these issues.
- 4.22 Ultimately, responsibility lies with the PSBs for ensuring that they are compliant with their licence conditions. They need to be satisfied that the criteria have been met before submitting their returns data to Ofcom. It is our view that broadcasters are best placed to determine what information they need to assure themselves through discussions with their suppliers.
- 4.23 The PSBs are also responsible for providing accurate data to Ofcom to demonstrate evidence of compliance. We need this data to be satisfied that titles allocated as regional productions have fulfilled the criteria and been made in line with the Guidance. In order to give us greater assurance, we have started to collect more information from the PSBs as part of their annual reporting (see 4.28).
- 4.24 Where we have concerns about a title, we will request additional information from the PSBs (as part of our complaints and/ or monitoring processes) about productions to understand how they fulfil the regional production criteria.
- 4.25 The specific information that we will request will vary on a case by case basis, as it will depend on the nature of the title in question. To provide an example, where a production has claimed to have met the substantive base criterion, we might ask for more information about when the base was established, and/or details about the staff who were based there during the production and their roles. It is worth noting, however, that the information we are likely to request will go towards our understanding of how the PSBs have implemented our Guidance and complied with their quotas, and will be the sort of information the PSBs would themselves require in order to satisfied themselves that they are compliant.

¹⁸² [Name Withheld 1](#), pp.5-6; [Name Withheld 2](#), p.13

- 4.26 It is for the PSBs to determine how best to ascertain the data they need from production companies to assure themselves they are compliant. We consider that broadcasters should be able to access relevant information from production companies about how a title has fulfilled the criteria as and when is necessary to evidence compliance - as set out in the PSB joint guidance. We note that this guidance indicates that production companies should retain relevant records for six years after production.
- 4.27 We acknowledge stakeholders' comments and have considered them, including in relation to possible resource implications of providing information to Ofcom. We would generally be requiring information which we expect that the PSB will already be collecting in order to determine which of the three criteria it has met and assure itself of compliance with its relevant licence obligations. In such cases, we do not consider that there would be significant additional burden. Nevertheless, we will consider in each instance the information we wish to collect to ensure that Ofcom is able to monitor compliance, and whether it is proportionate to do so, and assess on a case-by-case basis. Not all the information collected will necessarily be published and we will consider whether it is appropriate to do so in each case.

Data reporting and publications

- 4.28 As mentioned above, we are already increasing the amount of data we collect from broadcasters.¹⁸³ Specifically, we are now asking broadcasters to provide us with the postcode of the substantive base for productions which have met this criterion, and the macro-region in which the other two criteria were met for titles broadcast from July 2018. For titles broadcast from January 2019, we have also required broadcasters to report the percentage of the production budget that was spent outside London and the percentage of off-screen talent that were employed outside London (for productions meeting these criteria).
- 4.29 In addition to this information, we have decided to introduce a new data point which aligns with our decision on the substantive base criterion. As explained at paragraphs 3.26-3.28 we have decided not to go ahead with the proposal to require a substantive base to be open prior to commission at this stage. Instead, we will request that the PSBs start notifying us about whether, for programmes where the substantive base criterion is met, that substantive base was open prior to the point of commission. We also plan to request information to ask whether, in these cases, the offices stayed open and whether further commissions were secured from those bases. We will use this information to monitor the situation over time and to inform whether we need to make a further change to the substantive base criterion.
- 4.30 As we have decided not to go ahead at this stage with our proposal for the substantive base to be open prior to commission, and as set out above, we are gathering further

¹⁸³ See [Consultation](#), paragraph 5.69.

information from the PSBs, we will not be introducing the requirement proposed in the Consultation that the PSBs should detail the year the substantive base was established.

- 4.31 Alongside changes to reporting, we will be publishing all relevant data in a single interactive digital publication that users can interrogate, to make it easier to find the information that interests them.¹⁸⁴ We believe that our decision to collect and publish more information and to change the way we present this data will allow stakeholders to understand better how productions meet the criteria and fulfil the quotas. This in turn will increase trust and confidence in the system.

Complaints and monitoring

- 4.32 It is important that stakeholders know how to raise concerns with us, so that we can look into the matter. This will allow us ensure that the regime is working effectively, and where appropriate, tackle any issues of non-compliance. For this reason, we have included within the Guidance links which will take individuals to the relevant complaint forms, which can also be found on our website.¹⁸⁵ This will provide stakeholders with a clear route through which to make a complaint.
- 4.33 For clarity, we are not changing the process, or implementing a new process, for how we address complaints. Instead, we are aiming to make our existing process clear to stakeholders. Ofcom currently follows an existing framework for both complaints-led and Ofcom-initiated regional production related investigations. These are our general procedures for investigating breaches of broadcast licences ('the General Procedures')¹⁸⁶, which apply to a number of regulatory requirements placed on broadcasters, including requirements to fulfil production and programming quotas. The General Procedures are published on our website and were consulted upon when they were first introduced. We are of the view, therefore, that additional consultation is not required.
- 4.34 Anyone who wishes to make a complaint should fill out a complaint form via the Ofcom website. Where we believe that enough evidence has been provided for us to have concerns about a title, the General Procedures set out the steps we would take to look into the matter. If we believe that we should take forward a complaint due to a possible breach of a licence condition, it will then go through the Initial Assessment, Investigation and Sanction stages as necessary as set out in the General Procedures. We

¹⁸⁴ The publication will contain the same information that was included in previous iterations of the Register, in addition to some of the new information we are asking for, plus relevant information from the PSB annual compliance pack.

¹⁸⁵ NB 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 channel's (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](#).

¹⁸⁶ [General procedures for investigating breaches of broadcast licences](#) (Ofcom, 2017). We have a separate set of General 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).

will report on the outcome of any complaints that reach the Initial Assessment stage in the Broadcast and On-Demand Bulletin.¹⁸⁷

- 4.35 By detailing our complaints procedures and reporting on the outcome of any cases, we hope to increase transparency for stakeholders and restore confidence that where stakeholders raise issues relating to compliance with the quotas they are being assessed appropriately.
- 4.36 We have also made it clear in the Guidance that for any complaints relating to BBC productions, the principle set out in the Charter and Framework Agreement of 'BBC-First'¹⁸⁸ will apply, although we are able to consider complaints first under exceptional circumstances. As per our General Procedures, our approach to anonymity is to 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.¹⁸⁹
- 4.37 In order to understand better how the PSBs interpret the Guidance and how productions are meeting the criteria, we also continue to consider it appropriate to carry out proactive monitoring. This will allow us to see how the PSBs apply the existing Guidance, and how they interpret the revised Guidance once it comes into effect (see paragraph 5.4). We continue to believe that this is best achieved through reasonable and proportionate spot checks on titles submitted as regional productions. Monitoring will also encourage better record-keeping and greater accountability.
- 4.38 Generally, when we carry out a spot check, we would ask the relevant PSB for more information to understand the basis on which they have returned a title as regional. As mentioned, the types of information we will request may vary according to the nature of the case.
- 4.39 Where we consider that a title merits further assessment, the relevant procedures set out the steps we would take to look into the matter.
- 4.40 Enforcement action can be taken by Ofcom if:
- a) the licensee subsequently fails to meet its spend or hours licence quota, as a result of the relevant title no longer being counted towards them, or
 - b) the licensee has provided Ofcom with inaccurate information as part of its response to a formal information request.

In such cases we could consider sanctioning the licensee. Sanctions can range from an In-Breach Decision in the Ofcom Broadcast Bulletin through to the imposition of a financial penalty. The maximum financial penalty we can impose on the BBC is

¹⁸⁷ 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>.

¹⁸⁸ 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)).

¹⁸⁹ See Section 3: https://www.ofcom.org.uk/_data/assets/pdf_file/0013/102514/Advice-for-complainants.pdf

£250,000. For other PSBs, it is up to 5% of ‘qualifying revenue’. In line with our other enforcement procedures, we will consider a range of factors, including the severity of the case, when deciding what level of sanction is necessary.

5. Next steps

Transitional arrangements

What we proposed

- 5.1 We recognised in the Consultation that programme making often has a long lead time and that commissioning decisions take place well in advance of when a programme is eventually broadcast. Given that the impact of the proposed changes would vary depending on how the PSBs and their suppliers have been interpreting the Guidance to-date, we proposed that the updated Guidance and majority of changes would take effect with regard to titles broadcast from January 2020¹⁹⁰.

Summary of comments

- 5.2 Some respondents agreed with our proposal for the changes to come into effect with regard to titles broadcast from January 2020. This included the ACNI, who felt that the updated Guidance should come into effect as soon as practically possible, and no later than 2020 since it felt that the changes we had proposed were just a finessing of the regime, rather than those designed to bring about major change.¹⁹¹ Pact also agreed, but noted that for titles due to air in 2020 which have already been commissioned, producers should not be asked to retrospectively comply with significantly different criteria to those that applied at the point of commission.
- 5.3 With this in mind, the BBC, ITV, Channel 4 and Channel 5 all disagreed with the proposed transitional arrangements since they said that a significant proportion of their 2020 schedules have already been commissioned under the current Guidance.¹⁹² Most of the PSBs suggested that the changes should come into effect from January 2021, with an exception for anything which is commissioned prior to the updated Guidance being published or prior to 2020. In addition, ITV suggested any returning series which have incurred substantial capital investment should be exempt for the payback period of that investment. Channel 4 suggested an alternative approach would be for the updated Guidance to apply to titles commissioned from January 2020, rather than broadcast from 2020.

Our decision

- 5.4 We accept the arguments from the PSBs and Pact that it would be impractical to implement updated Guidance for titles which have already been commissioned. With a significant proportion of the PSBs' 2020 schedules already commissioned, we have

¹⁹⁰ This excluded some of the changes to the data the PSBs would be required to collect and report to Ofcom, which we agreed with the PSBs prior to the consultation.

¹⁹¹ [Advisory Committee for Northern Ireland](#), p.5

¹⁹² [The BBC](#), p.33; [ITV](#), pp.15-16; [Channel 4](#), pp.17-18, [Viacom International Media Networks/Channel 5](#), p.8

decided to allow a longer transitional period before the updated Guidance takes effect. Since delivery of the PSBs' quotas is calculated on what is broadcast in a given calendar year, we have decided that the updated Guidance will apply to titles broadcast from 1 January 2021.

- 5.5 If any titles due to be broadcast from 2021 have already been commissioned prior to 1 July 2019, it would be acceptable for them to qualify as regional on the basis of the previous Guidance. However, for programmes which are being re-commissioned, these should be made in line with the updated Guidance, regardless of whether they have previously received substantive capital investment. The pay-back periods for such investments could be long, and allowing such exceptions would delay the benefits of our changes from coming to fruition.

Monitoring of the PSBs/Industry survey

- 5.6 In the Consultation we suggested commissioning a survey of both producers of regional productions and PSBs. The aim of this survey was to gain a more detailed understanding of the mix of talent and resources employed on regional productions and in the commissioning of them, which we thought would be helpful to a wide range of stakeholders.
- 5.7 We received varied feedback from stakeholders about this suggestion. Some respondents supported the proposal as they felt it was important to assess the balance of roles based in London and in the nations and regions.¹⁹³ These stakeholders were interested in gaining a better understanding of the talent distribution across the UK, some also offered practical suggestions, such as including freelancers as well as production staff in the survey to gather a complete picture.¹⁹⁴
- 5.8 In contrast we also received criticism from some of the PSBs for the proposal as they were concerned about the additional administrative burden collecting this information would entail, which they believed would be of minimal value.¹⁹⁵ Both the BBC and ITV also queried why such a survey is required or appropriate under our statutory duties.¹⁹⁶ In addition, Channel 4 questioned how beneficial it would be to undertake the survey now, before the updated Guidance has come into effect, and also before the benefits of live industry initiatives have had time to be realised (e.g. 4 All the UK, The Farm's expansion).¹⁹⁷
- 5.9 During the consultation period, and in discussions with stakeholders, we also considered the practicalities of commissioning this work at this point. One main concern which has become apparent is that producers and PSBs do not currently hold all of the

¹⁹³ [Advisory Committee for Northern Ireland response](#), p.2; [Advisory Committee for Scotland](#), p.2; [Directors UK](#), p.9; [Pact](#), p.4; [Scottish Government](#), p.4; [Indie Club](#), p. 19; [Welsh Government](#), p.5

¹⁹⁴ [Directors UK](#), p.9; [Scottish Government](#), p.4; [Pact](#), p.4

¹⁹⁵ [The BBC](#), pp. 31-32; [ITV](#), p.14; [Channel 4](#), p.17; [Viacom International Media Networks/Channel 5](#), pp.8-9

¹⁹⁶ [The BBC](#), pp. 31-32; [ITV](#), p.14

¹⁹⁷ [Channel 4](#), p.17

data we were setting out to gather. As such it is likely that we would only be able to collect an incomplete data set, which would offer limited value. We are also conscious of creating additional burden on the PSBs and producers for providing additional information.

- 5.10 Therefore, considering these practical constraints and the views of stakeholders, along with the timings of introducing our changes to the regional production regime, we have decided that now is not the right time to conduct such a survey. We will wait for the changes we have made to the regime, plus relevant industry developments to bed in, and then consider using a survey such as this to reflect on how the industry is developing if necessary. In addition, as already explained above, we have begun collecting more data from the PSBs regarding their regional productions and will also be gathering more information regarding substantive bases which open after the point of commission. This new data will also help to build a better understanding of how the sector is working and we plan to publish some of this as part of our annual reporting.