



## Directors UK Response to Ofcom's Review of Regional Programme Guidance

Question	Your response
1) Do you agree with our proposed change to articulate the intention of the regional production obligations at the start of the Guidance? (See wording at Annex 7).	<p>Confidential? –N</p> <p>Directors UK welcomes the opportunity to respond to Ofcom's review of Regional TV Production and Programme Guidance.</p> <p>Directors UK agrees with the need to make clear the policy objective of the regional programming obligations at the start of the Guidance document to ensure that there is proper investment in the nations and regions. We expect to see this being applied more rigorously by broadcasters, production companies and Ofcom in their assessment and delivery of regional programming criterion.</p> <p>It is concerning, but not surprising, to read the Oliver &amp; Ohlbaum research that shows that "66% of MoL hours in 2017 were produced by companies with a head office in London" and that "89% of independent sector revenues are generated by producers primarily based in London"<sup>1</sup> as this reflects the experiences of our members in the nations and regions who</p>

<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/130706/Oliver-and-Ohlbaum-regionality-trends-within-the-UK-production-sector.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/130706/Oliver-and-Ohlbaum-regionality-trends-within-the-UK-production-sector.pdf) p 78 and 82.

	comment on the influence of London on regional productions.
2) Do you agree with our proposed changes to the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.	<p>Confidential? – N</p> <p>Directors UK welcomes an increase in clarity as to what constitutes a substantive base.</p> <ul style="list-style-type: none"> <li>• We agree with the introduction of wording to stipulate that the substantive base “should already be operational prior to the point of commission”. However, we recognise that many independent production companies work within narrow margins, and may not be in a position to open a substantive base in the region without already having a commission. It may be more practical to expand this guidance so that a production company could meet the substantive base either by being in existence prior to the point of commission, or by an agreement at the point of a regional commission that a production company must commit to establishing and retaining a development presence in the nation and region, for a period of time e.g. at least a year after the first programme was commissioned, for the purpose of winning new commissions. Thereby creating an ongoing commitment to establishing a base and developing new projects for future commissions in the region in a way that is in keeping with how the industry works.</li> <li>• We agree with changes to the wording of the criterion to make it clear that the production must be “made from the substantive base” and “all elements of the criterion must be met”.</li> <li>• We agree that an additional reporting requirement to include the year the base was established will help in providing greater transparency regarding the presence of a substantive</li> </ul>

	<p>base. We would caution that this should be monitored to ensure that by providing a start date it doesn't simply give legitimacy to a substantive base which doesn't make anything or employ anyone in the region.</p> <p>We note Ofcom's comments regarding the potential risks of these changes preventing companies from opening offices in a region before a commission has been won, this could be addressed as outlined above. We also believe that this risk should be offset by the fact that production companies have two other criterion which would enable them to achieve a commission in a nation or region if they met those criterions.</p> <p>We continue to have concerns that by not stipulating what roles count under the second criterion of "senior personnel involved in the production" (Annex 7, p2 para 6.ii) that it may still be possible for a company to secure a commission in the region using the substantive base criterion without employing key off-screen talent, as outlined below.</p>
<p><b>3) Do you agree with the suggested explanatory notes for the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</b></p>	<p>Confidential? – N</p> <p>The introduction of an annex to the Guidance with explanatory notes is extremely helpful to ensure the Guidance is correctly applied.</p> <p>However, as outlined above we continue to have concerns that the explanatory notes for the Substantive Base criterion does not provide further guidance as to what roles counts under the criterion of "senior personnel involved in the production".</p> <p>In not providing examples of roles for 'senior personnel involved in the production' that would qualify it is possible that companies could be including production management and not true production roles in the creative sense. As highlighted in our original submission our members had concerns that meeting the substantive base criterion had not improved the regional employment of senior production staff:</p> <p><i>"Whilst there are productions being</i></p>

	<p><i>made in the nations and regions, they are on the whole being directed and staffed by southern based talent, with only junior jobs going to regionally-based crews. This does nothing to develop the local indigenous talent who then leave to pursue opportunities out of the region". .....</i></p> <p><i>"In cases where the senior personnel are usually employed in the region but then employ all key HODs or crew who are not from the region, we would question whether this should be counted as a substantive base."</i><sup>2</sup> (Directors UK submission to Ofcom, May 2018)</p> <p>The reason given for not stipulating types of senior roles is due to "an acknowledgement that job titles vary between employers". It is our view that there are some key production roles which are consistent across productions: e.g. Producer/Director, Writer, Series Producer, Director of Photography etc. Whilst not wanting to create a list which is limiting it would be helpful to provide some guidance in the form of <i>"for example writer, producer/director, DOP would count as senior personnel on production"</i> as this may assist in giving a clear indicator of the level/nature of the roles which could be included. By omitting to include any guidance or explanatory notes, coupled with the lack of definition or monitoring of what grade or types of roles qualify as part of the 50% quota for off-screen talent criterion, it leaves this description at risk of being mis-allocated and the employment of senior production talent in the regions will continue to be over-looked.</p>
<p><b>4) Do you agree with our proposed changes to the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</b></p>	<p>Confidential? – N</p> <p>We are not qualified to provide detailed insight on production budget allocation. However, we welcome the proposals by Ofcom to provide greater clarity as to what should and should not be included in the production budget as</p>

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/114257/Directors-UK.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/114257/Directors-UK.pdf)

	regional spend.
<b>5) Do you agree with the suggested explanatory notes for the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</b>	<p>Confidential? – N</p> <p>Providing additional explanatory notes to provide greater clarity as to what should and should not be included in the production budget as regional spend is welcome. In particular in relation to clarifying the inclusion/exclusion of spend on travel and overheads in the region as a way of supporting the use of local facilities and spending on local infrastructure.</p>
<b>6) Do you agree that the off-screen talent criterion should remain the same? If not, please explain why, providing appropriate supporting evidence where possible.</b>	<p>Confidential? – N</p> <p>No, Directors UK does not believe the off-screen talent criterion should stay the same.</p> <p>As outlined in our submission to the Call For Evidence last year, the lack of definition as to what grade or types of roles qualify as part of the 50% quota for off-screen talent has meant regional production has not supported the development and career progression of local talent in key production roles. There is an assumption that these figures automatically include directors and producers, but our members' experience suggests they are not.</p> <p>As shown in our previous submission (May 2018)<sup>3</sup>:</p> <p><i>In the case of directors, our examination of the employment of directors in Scotland, for example, has highlighted a significant lack of employment of locally based directing talent:</i></p> <p><i>An analysis of the Creative Scotland list of television drama productions made in Scotland during 2015-17 found there were 30 television drama productions filmed in Scotland over the three year period, including ongoing series such as River City and Outlander. Of the 121 directors used only 26 were Scottish or Scottish based; 13</i></p>

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/114257/Directors-UK.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/114257/Directors-UK.pdf)

*of whom were female, and only 4 of the females were Scottish.*

*In addition, having done our own analysis of the list of network productions made in Scotland in 2016-17, from the 'Made Outside London Programme Titles' register:*

- Only 1 out of 3 factual and factual entertainment productions made out of BBC Scotland were directed by Scottish talent. This is backed up by our anecdotal research.*
- Only 1 out of 6 of the productions commissioned by BBC Scotland drama were made by a Scottish based director.*

*It is unclear who makes up the 50% and gives no indication as to whether their input into the process of making the programmes is significant in a creative sense.*

*It is our members' experience that the more senior roles and HOD roles are not being filled by local talent. As those with experience in the region are not getting the Network opportunities, it leaves a much more junior and less experienced local talent base, who are then not getting the opportunities to further develop their careers to Network level. Our members tell us there have been limited pathways to progress in directing in the nations and regions.*

Our members in the regions reported their experiences of being told that there is not the local talent. As previously stated, we do not believe there is a lack of available talent, but instead a lack of willingness to use the local talent and to develop their skills and experience in order to compete with the London-based talent, which is more often favoured.

Directors UK membership consists of directors working across the country and we have regional representatives on the Board from Scotland, Wales, the North West and the South West. If there is no obligation on production companies to use senior level talent on productions then talent will leave the region

	<p>and relocate to London in order to progress, which does not serve to develop the local production community.</p> <p>We maintain that there should be a requirement for there to be monitoring and reporting of the specific roles being counted within the 50% quota for regional productions. The current system gives no indication as to who is being counted as part of this off-screen talent and whether their input into the process of making the programmes is significant in a creative sense. We remain concerned that based on the current criterion requirements a company could feasibly qualify by meeting the Substantive Base and the Production Spend Criterion, while employing small numbers of junior staff and make little impact on employment of senior production roles.</p> <p>Like Ofcom we don't want to restrict the mobility of talent to work anywhere, but given there has been limited improvement in employing off-screen talent from within the regions we believe there must be some form of incentive or measurement requirement in order to achieve change in the employment of local directing talent.</p> <p>For example, in cases where a production has not met the Off-Screen Talent Criterion, but has met the Substantive Base Criterion and the Production Spend Criterion, Ofcom could consider looking at the proportion of spend on off-screen talent in the region as an additional indicator for assessing whether companies are only hiring junior talent. Analysis of this data should then indicate whether the quota regime is effective in encouraging genuine support for employment in the nations and regions.</p>
<p><b>7) Do you agree with the suggested explanatory notes for the off-screen talent criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</b></p>	<p>Confidential? – N</p> <p>Directors UK welcomes the clarification that the 50% off-screen talent criterion should only be assigned to roles that are directly related to the creative production process of a programme, and not to roles such as drivers, cleaners, catering staff. However, as stated the explanatory notes do not address our concern</p>

	<p>over the seniority of production talent being employed as part of the 50% quota.</p> <p>As outlined above, our members have reported that the quota is being filled by junior roles whilst senior production talent, such as directors are being shipped in from London, thus restricting the employment opportunities of local talent. We believe there must be responsibility on productions to employ some locally-based directors and senior HODs.</p> <p>We also welcome the additional clarity that staff hired through a studio or service company must live outside the M25. A recent example from one of our London-based directors shows how this has been abused in the past. The director was recently contracted for a production - not by the production company which is normal practice, but via a studio. As a result, they were not contracted under a standard director's contract, giving legal safeguards over copyright and credits, but a generic crew contract. The production company insisted they had to be contracted in this unusual way, and we can only conclude it was to keep their engagement "off the books". Had they been contracted in the usual way, directly by the production company then it would have been clear the director was London based and not based in the region where the production was being made.</p>
<p><b>8) Do you agree with our proposed change to exclude self-promotional content from the calculations? If not, please explain why, providing appropriate supporting evidence where possible.</b></p>	<p>Confidential? – N</p> <p>Yes. It is shocking that it has been able to contribute towards regional production quotas for so long without being questioned. We are glad that Ofcom is amending the guidelines to close this loophole.</p>
<p><b>9) Do you agree with our proposed changes to the allocation categories (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</b></p>	<p>Confidential? – N</p> <p>Not qualified to respond. Our position is that any changes to the guidance should support the employment and development of production talent in the nations and regions. How productions are allocated should contribute to delivering this intention.</p>



<p>10) While we are not obliged to consult on our internal processes, we would welcome stakeholders' views on any adverse consequences we have not identified that may occur as a result of our planned changes in relation to our compliance and enforcement processes, namely:</p> <ul style="list-style-type: none"> <li>a) data gathering and reporting by the broadcasters;</li> <li>b) more comprehensive data publications;</li> <li>c) proactive monitoring by Ofcom; and</li> <li>d) a clear articulation of the complaints process.</li> </ul>	<p>Confidential? – N</p> <p>a) <b>data gathering and reporting by broadcasters;</b> We agree with the proposal to improve data gathering and reporting. Accountability is key to ensuring that the intent of the regulation is being adhered to. It is clearly apparent that this has not been achieved without greater oversight from an external regulator. We maintain our concern that the additional data requirement does not include the monitoring and reporting of the types of roles contributing to the 50% off-screen talent quota. Without this we are concerned that the data will not tell us anything about the employment and development of a production skills base in the area.</p> <p>Experience tells us that data gathering and monitoring is the only way of truly measuring and quantifying the employment and development of talent and productions in the region. As such, it remains our position that without an annual data requirement to gather this it is possible that productions will continue to cherry-pick some key production roles (such as director) from London and still present a positive case for the use of talent in the regions.</p> <p>We note Ofcom's intention to conduct an industry survey of production companies and broadcasters about regional production to benchmark the use of nations and regions talent and resources compared to London talent and resources. This is a welcome proposal and is essential in order to validate that PSBs and production companies are acting in accordance with the principles of the guidance. However, because surveys based solely on the respondent's retrospective data can be subject to gaps or inaccurate reporting, we would advise incorporating spot audits by Ofcom to validate the accuracy of responses. It is also essential that any assessment, survey or monitoring</p>
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	<p>of production staff must include both staff and freelancers in order to provide a complete picture and that these are conducted on a regular basis to ensure progress is being monitored. We would also encourage seeking qualitative feedback from those working in the nations and regions.</p> <p><b>b) more comprehensive data publications;</b> The proposal to include more data and to report it in one interactive report is welcome as it will enable improved analysis and assessment. It is essential Ofcom keep publishing this so that stakeholders such as Directors UK can monitor the employment of our own members as an additional check and balance. It is also important to stress that the data gathered must accurately reflect the true measures for regional production and its impact on the production ecology in the regions. We maintain that this would be further enhanced by introducing reportable data on the roles being hired in the regions.</p> <p><b>c) proactive monitoring by Ofcom;</b> - We welcome the introduction of spot checks and other proactive measures of monitoring by Ofcom. Clearly the absence of any rigour to date has enabled production companies and broadcasters to fail in their delivery on the intention of the regional programming and production guidance.</p> <p><b>d) a clear articulation of the complaints process.</b> We welcome the introduction of clarity in the complaints process.</p>
<p><b>11) Do you agree with our proposal for the new Guidance and majority of changes to take effect from January 2020?</b></p>	<p>Confidential? – N</p> <p>Yes, and note that some reporting requirements are being phased in earlier.</p>