



## JOINT BROADCASTER GUIDANCE FOR APPLICATION OF REGIONAL PRODUCTION DEFINITIONS SEPTEMBER 2019

UPDATE: In June 2019, Ofcom published an updated version of its Definitions which is the definitive interpretation of when productions qualify as ‘regional productions’. This guidance document should be read alongside Ofcom’s Definitions to illustrate what broadcasters consider best practice. Ofcom’s definitions are attached as an Annex to this Guidance.

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Ofcom’s Regional Production and Regional Programme Definitions sets out the criteria to determine whether a programme is a ‘regional production’ and therefore should be included against quotas for productions made out of London (MOL) contained in the licences of the four UK public service broadcasters.

This guidance has been developed by all four broadcasters to provide greater clarity and practical advice to the UK production sector as to how to approach the application of these criteria. In doing so, the aim is to reflect both the original policy objective to stimulate and strengthen production outside of London, and the intent of the Ofcom definitions to enable that to be achieved in a range of different ways. In particular to combine serious local investment and talent development, with the need for flexibility, given their application across a wide variety of genres, locations, business models and local production ecologies.

The Broadcasters are clear that one overarching principle must be met:

**Every production qualifying as ‘out of London’ should make a meaningful contribution to the overarching ambition to support talent development and strengthen regional production in the UK.**

Whilst the Broadcasters acknowledge their role in providing guidance and their ultimate responsibility for compliance with Ofcom Licence conditions, production companies are accountable for ensuring all spend and reporting is compliant with the Ofcom Definitions. They warrant to do so within their contracts and should be able to demonstrate compliance for all commissions. This guidance is intended to help producers by providing greater clarity and consistency on what elements to consider in reaching a view.

This note is structured as follows:

- **Section 1** sets out the guidance for production companies on the interpretation of the Ofcom Definitions to qualify as an out of London production;
- **Section 2** explains how productions that do qualify are allocated to a particular nation, region or multi-nation/English region category; and
- **Section 3** provides guidance on the steps required by Broadcasters for producers to demonstrate compliance with the Ofcom Definitions.



## 1. INTERPRETATION OF THE OFCOM DEFINITIONS

Paragraph 7 of the Ofcom Definitions requires that to count towards the regional production quota by hours, relevant productions must meet two out of the following three criteria:

### **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.

### **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.

### **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.



**General Points:**

Issue	Interpretation
Programmes made outside the UK/out of scope	<p>The Ofcom Definitions state that regional production quotas apply only to programmes made in the United Kingdom. Programmes made outside the UK cannot therefore be considered “<i>relevant programmes</i>” and should be excluded from calculation of the quotas.</p> <p>Ofcom clarifies in an Annex to the Definitions that a programme is considered to be made outside the UK (and is therefore excluded from the regional production quotas) where it meets at least two out of the following three criteria:</p> <ul style="list-style-type: none"> <li>(i) Production location (i.e. the location of the base actually managing the production) is not in the UK;</li> <li>(ii) More than 50% of the budget (excluding on-screen talent, archive material and copyright/sports right costs) is spent outside the UK; and</li> <li>(iii) More than 50% of the talent (excluding on-screen talent) are usually employed outside the UK.</li> </ul>
Commissions vs. Acquisitions	<p>The Ofcom Definitions state that the quotas do not apply to acquisitions and these should be excluded from the quota calculations.</p> <p>Acquisitions are ‘ready-made programmes bought by a broadcaster from another rights holder’. These are generally ‘pre-existing’ or ‘off the shelf’ programmes with no editorial input from the broadcaster.</p> <p>Pre-buys or pre-purchases are programmes purchased by a broadcaster in advance of production. Where a broadcaster has editorial input, these should be treated as a commission for the purpose of deciding if the production is potentially in scope; where there is no editorial input, these should be treated as an acquisition and excluded from the calculation of the quotas. Further guidance can be sought from the relevant broadcaster if required.</p>
Co-productions and co-financing arrangements	<p>Co-productions can be included in the Ofcom MOL quota.</p> <p>The criteria should apply to the whole production spend for the programme irrespective of any co-production or co-financing arrangement.</p> <p>Because the Ofcom Definitions concern the production of commissioned programmes for the UK, significant costs associated with delivery or re-versioning of programmes for ex-UK audiences should be excluded.</p>



	Where this is applicable to a production, further guidance should be sought from the relevant broadcaster.
Multi-part commissions	<p>The criteria should apply to each individual commission. It should apply to the whole commission, and be assessed on the basis of the sum of all its parts. This should be allocated to a nation or region (see section 2 for how allocation is determined).</p> <p>In the case of programme strands, where a number of separate commissions can make up a series, each individual commission should be assessed against the criteria separately.</p>

#### Criteria (a): substantive base

Issue	Interpretation
How many of the three sub-criteria <sup>1</sup> should be satisfied in order for a business/base to qualify as substantive?	<p>The Ofcom Definitions state that all three sub-criteria should be met for a production to qualify as a substantive base. However, it is possible for a single individual to meet the requirements for more than one sub-criteria (for example in smaller companies).</p> <p>For sub-criteria (iii) (senior personnel involved in seeking programme commissions) to apply, it is not necessary for every programme managed or produced from the relevant base to be developed at that base. Where an idea originates and is executed can be different.</p>
Location of a substantive base	Location of the substantive base should be determined by postcode.
Parent/group companies	Substantive base of an individual company should be determined on its own merits on the basis of production activity. Location of parent/group company is not relevant. The requirement for <i>senior personnel involved in the production in question</i> to enable a base to be substantive, is sufficient to prevent group companies from 'warehousing' bases where there is no meaningful impact.
SPVs	The Ofcom Definitions state that the location/address of any SPV is not relevant for determining substantive base. The focus for the criteria is on the location of the production activity.

<sup>1</sup> Sub-criteria: Usual place of employment of (i) executives managing the regional business; (ii) personnel involved in the production in question; and (iii) senior personnel involved in seeking programme



<p>Co-producers located in different regions</p>	<p>Location/address of a production partner is only relevant where it is also the usual place of employment of executives and senior personnel involved in the production in question. These will need to be considered on a case by case basis in discussion with the Broadcaster as to where the balance of production activity and senior personnel lies.</p> <p>A production should only be allocated to a single substantive base</p>
<p>New bases</p>	<p>It is entirely legitimate for a production company to establish a new base for the purposes of a specific commission, with a view to it remaining substantive after the production is finished. However, in the spirit of the definition, broadcasters need to differentiate between genuine long term intent to maintain a substantive base, versus a temporary production office. This should be done through conversations with production companies at the point of commission.</p>
<p>Usual place of employment</p>	<p>Usual place of employment is the place where the individual spends a majority of their working time. This applies to all types of employment contracts required on a production (employed, freelancer, fixed term contract).</p> <p>The definition of ‘a majority of their working time’ may vary by circumstance and needs to be evaluated at the broadcaster’s discretion but could include, for example, the majority of time across a year, or the majority of time across a week on a regular basis.</p> <p>Freelancers often do not have a ‘usual place of employment’. Where this is the case, usual place of employment should be the individual’s home address.</p> <p>Application of this criteria should also take account of flexible and part-time working.</p>
<p>Definition of ‘Executives’ / ‘Senior Personnel’</p>	<p>In this context, Ofcom defines ‘Executives’ as <i>“those individuals responsible for making independent, executive decisions and/or having a significant leadership role in relation to the management of the regional business”</i>.</p> <p>Ofcom defines ‘senior personnel’ as <i>“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)”</i>.</p> <p>Application of this criterion should also take account of flexible and part-time working.</p>



Number of Executives/Senior Personnel	The Ofcom Definitions state that there is no minimum number of individuals who need to be employed at the substantive base; the number will depend on what delivers a genuine operational production office in the locality in which it is based. This could apply to a single individual where the scale and structure of the relevant business warrants this (e.g. a start-up or a newly opened regional office).
Executives managing the regional business	An “Executive” should be someone senior enough to have a material influence in managing the regional business. Their primary role may be either editorial or commercial but does not necessarily require involvement in the production in question. However, an Executive managing the regional business can also be involved in the production in question (for example in a smaller company). Job titles tend to vary by company so this should not be prescriptive. However for illustrative guidance this may include: CEO, MD, Exec Producer, Head of Production, Creative Director, Production Executive, Line Producer, Head of Regional Business and equivalent roles.
Senior personnel involved in the production in question	<p>To qualify, it is expected that senior personnel with material influence over the production would have their usual place of employment at the substantive base of the production company or within the qualifying nation or region, in the case of freelancers. This may include editorial and business roles.</p> <p>Job titles tend to vary by company, However for illustrative guidance this may include: On a returning factual series this would normally be Series Producer and above, but on a single specialist documentary this could be a producer/director who has creative direction of the whole programme. On drama, this would normally include Director, Producer and/or Executive Producer. In all genres this includes senior business roles (e.g. Production Executive, Line Producer, Head of Production).</p>
Senior personnel involved in seeking programme commissions	<p>The title of relevant roles will depend on the nature and scale of the production company in question and will be determined at the broadcaster’s discretion. However, to qualify, relevant individuals need to be actively involved in seeking programme commissions - which could include editorial roles overseeing or managing development – or, in the case of some genres, business roles helping to put budgets or bids together.</p> <p>It is possible that the same individual is also an “executive managing the regional business” and/or “senior personnel involved in the production in question” where that individual production is not fully occupying their time (for example in a smaller company).</p> <p>Application of this criterion should also take account of flexible and part-time working.</p>



**Criteria (b): production spend**

Issue	Interpretation
Production budget/spend	The Ofcom Definitions state that costs should be counted as actual spend on the production rather than budgeted spend.
Production fee	<p>For productions which are due to broadcast from 1 January 2021 (unless commissioned before 1 July 2019), production fee should be excluded for the purposes of calculating this criteria.</p> <p>For productions broadcast before 1 January 2021 and/or commissioned before 1 July 2019, production fee should generally be excluded for the purpose of calculating this criterion, unless it is likely that the production fee will benefit regional production. This should be agreed at the point of commission with the relevant Broadcaster.</p>
Filming outside the UK	The Ofcom Definitions state that if a commission is not excluded as 'Made outside the UK' (see guidance above) then all cost of filming incurred outside the UK (i.e. filming/production expenses outside of the UK) should be included within the overall programme budget. Such spend should not normally be included as regional spend for the purposes of meeting the qualifying criteria. However, where spend relates to production talent and services from the UK used in foreign locations, this can be included where relevant.
Re-versioning costs associated with co-productions	Because the Ofcom Definitions concern production spend in the UK, significant costs associated with delivery to or re-versioning of programmes for ex-UK audiences should be excluded from production spend. Where this is applicable to a production, further guidance should be sought from the relevant broadcaster.
Overheads	Overheads are expenses relating to overall business operations which cannot be allocated in total to a specific production. As such, it is appropriate to include relevant overheads in the calculation of production spend. The Ofcom Definitions state that overheads 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).
Travel expenses	The Ofcom Definitions state that travel expenses can be included in the calculation of production spend where they are reasonably incurred in the costs of making a programme. These should be allocated to a region based on the starting point of any journey, or the location of any relevant accommodation.



Goods sourced from outside the UK	<p>Goods sourced from outside the UK and online from international providers (e.g. Amazon/eBay) should generally be included in the calculation of total programme spend.</p> <p>In allocating that spend, consideration should be given to the following factors:</p> <ul style="list-style-type: none"><li>• Where this is an incidental item, this should be allocated to the nation/region of the delivery address;</li><li>• Where an item represents a significant cost (i.e. over £1,000), this should be allocated in the same way as foreign filming ie not allocated as regional spend.</li></ul>
Service companies	<p>Where production companies sub-contract services related to the production to independent service companies (e.g. catering, transport, security), the costs of these services should be included in the calculation of production spend.</p> <p>Where such costs are to be allocated as out of London, or a specific nation or region, producers must use reasonable endeavours to assure themselves, and seek assurances from suppliers where relevant, on the location of spend in the supply chain. We would not expect out-of-London service companies to be used as shells to facilitate the employment of London-based talent</p>
“on screen talent”	On-screen talent is excluded from the criteria.
“archive material”	<p>Archive material (e.g. archive footage and still images) is excluded from the calculation of production spend to reflect that it was not produced specifically for the production in question and therefore has no economic benefit.</p> <p>“Archive material” costs should include costs (e.g. rights/licence fees) relating to use of material that was not made specifically for the production in question.</p>
“copyright costs”	<p>Copyright costs are excluded from the calculation of production spend. In this context, copyright costs are those associated with the use of licenced material. Costs associated with IP created for the purpose of the programme/production should be considered copyright costs and therefore be excluded from the calculation of production spend (e.g. script or music commissioned specifically for the production).</p>





**Criteria (c): production talent**

Issue	Interpretation
"production talent"	<p>The Ofcom Definitions state that production talent includes those roles directly involved in the production of the programme. This should not include service roles (e.g. catering or security), although these are relevant to the application of criteria 2 (production spend).</p> <p>Production companies should be able to identify relevant roles for each production and should take due care that their reporting in this area adheres to the spirit of the Ofcom Definition, including when spend is incurred via third party providers/sub-contractors (see above).</p> <p>Employment status is not relevant to determining application of the criteria.</p>
Costs relating to production talent	<p>Cost of production talent should exclude equipment and facility costs.</p> <p>Cost of production talent should be inclusive of relevant employment overheads (e.g. National Insurance contributions, sick/holiday pay, pension contributions).</p>
"usual place of employment"	<p>The Ofcom Definitions state that for production talent employed by the production company, the usual place of employment is considered to be the location where an individual is based for the majority of their working time.</p> <p>The definition of 'majority of their working time' may vary by circumstance but could include, for example, the majority of time across a year, or the majority of time across a week on a regular basis. Application of this criteria should also take account of flexible and part-time working.</p> <p>If a 'usual place of employment' cannot be determined (e.g. in the case of freelancers) then usual place of employment should be the individual's home address. Business agent's address or PO Boxes do not apply.</p> <p>A production company must use reasonable endeavours to ensure that the location provided by production talent is accurate.</p>



## 2. ALLOCATION TO A SPECIFIC NATION OR REGION

Ofcom's Definitions explain that Regional Production must be assigned to a nation (Scotland, Wales, Northern Ireland), an English region (North of England, South of England, Midlands and East of England) or to a multi nation/region category (Multi-English region, Multi-nation outside England or "Multi Nation/English region").

The first step is to determine whether a programme qualifies as a Regional Production by meeting at least two out of the three Ofcom criteria (using the guidelines in section 1).

If it does qualify as a Regional Production then the second step is to allocate to a nation, a region or to a Multi Nation/Region category. Ofcom's definitions explain how this allocation works in detail, but in headline terms:

- Substantive base remains the primary driver of where a regional production is allocated.
- A regional production is re-allocated to another nation or region if more than 70% of spend and more than 50% of talent are in that particular nation or region. If not, and the spend is spread across different nations or regions, for regional producers allocation defaults to substantive base
- The "Multi Nation/Region" categories are used for regional productions from London producers which do meet the out of London spend and talent criteria but do not meet both 70% of spend and 50% of talent in any one particular nation or region.

## 3. COMPLIANCE

Broadcasters acknowledge that they are responsible for compliance with their Ofcom licence obligations, and to supply Ofcom with data to demonstrate compliance if required. However, Broadcasters rely on producers ensuring that spend and reporting are compliant with the Ofcom Definition and this guidance. Producers also need to ensure that adequate records are retained in order to demonstrate compliance if necessary. Producers are therefore accountable to Broadcasters for this compliance and they warrant to do so within their contracts.

The following are agreed principles of best compliance practice to be overseen by the relevant broadcaster in accordance with their own internal processes:

- At the start of a production, there should be clear communication between the producer and broadcaster as to which criteria will apply to the production. This should include assessing the impact on production spend and the recruitment of talent.
- Producers are required to produce and deliver the programme in compliance with the regional criteria confirmed at the outset.
- During the production, the producer will be required to update the broadcaster, at any usual business points, that they are on-track to comply with the relevant criteria and should notify



the broadcaster if there is any change that could impact compliance as soon as reasonably practicable.

- On programme delivery, the producer will be required to provide formal confirmation that the production has met the requirements under the relevant criteria, in line with Ofcom reporting requirements.
- Production companies must maintain adequate documentation evidencing compliance with the relevant criteria, which the broadcaster shall be entitled to request/review at any time in order to conduct appropriate assessments, both during production, on delivery and after the Ofcom MOL register is published, of compliance. Relevant documentation shall be retained by producers for at least six years in line with rules on retention of company documents.

Broadcasters will activate their right to audit as they consider appropriate.



## APPENDIX: OFCOM DEFINITIONS

The following sets out Ofcom's Definitions in full:

### 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')<sup>3</sup>, 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'.



### **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.

### **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).