CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

AGENDA

24th Meeting, 2020 (Session 5)

Thursday 8 October 2020

The Committee will meet at 9.30 am in a virtual meeting and will be broadcast on www.scottishparliament.tv.

1. Public sector broadcasters and commissioning: The Committee will take evidence from—

   Alan Clements, Managing Director, Two Rivers Media;

   Neil Webster, Managing Director, Happy Tramp North;

   Claire Mundell, Creative Director and Founder, Synchronicity Films.

2. Consideration of evidence (in private): The Committee will consider the evidence heard earlier in the meeting.

3. Work programme (in private): The Committee will consider its work programme.

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Edinburgh
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The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk

PRIVATE PAPER

**Agenda item 3**

PRIVATE PAPER
Culture, Tourism, Europe and External Affairs Committee
24th Meeting, 2020 (Session 5), Thursday 8 October 2020
Public Sector Broadcasters and Commissioning

Note by the Clerk

Background

1. In August, the Committee agreed to hold an evidence session with independent producers to examine the role of Public Sector Broadcasters in supporting the Scottish television production sector. The evidence session builds on some of the recommendations made in the Committee’s report on the screen industry, “Making Scotland a Screen Leader”. A key recommendation raised in the report was the role commissioners play within the industry and the lack of decision making power in Scotland.

2. The BBC will be giving evidence to the Committee on 29 October regarding its Annual Report and Accounts. Today’s evidence session provides an opportunity to discuss the BBC’s role within the sector and the progress of the new BBC Scotland Channel, as well as the wider role of other PSBs.

Evidence session

3. The evidence session will focus on three areas: commissioning independent productions, commissioning Scottish productions, and the impact of Covid.

4. The Committee will take evidence, via video conference, from—

- Alan Clements, Managing Director, Two Rivers Media
- Neil Webster, Managing Director Happy Tramp North
- Claire Mundell, Director, Synchronicity Films

Supporting Information

5. Alan Clements, has submitted written evidence in advance of the session, this provided in Annex A.

6. SPICe have produced a briefing on public sector broadcasters and commissioning, available in Annex B.
The Company

Two Rivers Media was set up in January 2019 with backing. Its current investors are Noble Grossart, and the Channel 4 Growth Fund. We have attracted major talent to a Glasgow base with the intention of building an independent company of scale in Scotland to compete in the UK and international market. Our key creative staff are Mick McAvoy, Head of Factual, Lizi Wootton, Head of Popular Factual, Mirella Breda, Head of Entertainment, Lucy Bacon, Director of Unscripted Development and Marcus Wilson, Head of Drama. The management team is completed by Ross Cowan, Head of Legal and Faiza Mahmood, Head of Finance.

In our first 20 months we have won a range of commissions from a variety of broadcasters and have delivered a major drama Susan Hill's Ghost Story - The Small Hand for Channel Five (a co-production with Awesome Media), Escape To The Chateau – Make Do And Mend for Channel 4 (a co-production with Chateau TV) and Frankie Boyle’s Tour of Scotland for BBC2. In addition, we have provided a range of content to the new BBC Scotland channel including Children of The Devolution and Choose Life.

Last week we signed a strategic development and distribution with All3 Media International to represent our shows worldwide.

Overview

This current OFCOM PSB Review offers a great opportunity to rethink commissioning across the four nations of the UK. Though the new services, Netflix, Amazon, Peacock and the rest, are important, and growing, players, the PSBs will remain the most significant commissioners for the Scottish production sector in the decade to come.

In order for the PSBs to retain the progress made in the last decade, two things need to happen. First, the current quotas need to be maintained, in some cases enhanced, and properly enforced. Second, there should be a proper decentralisation of decision-making, and decision-makers. Just as people would no longer think that commissioning choices should be made only by men, or by white people, they should not all be made in one city or even, in the case of the BBC, ITV and Channel 5, in a single postcode in each of their cases.

That change would not only be a material change for producers across the UK, it would be a major step forward in another highly significant way. Solve the N&R issue in British broadcasting and production and you go a long way to solving the diversity issue too. If people believed they could build careers and lives outside London, it would both refresh the voices being heard on our media and would mean that young people without access to the bank of Mum and Dad would be able to join the industry. This would have a transformational effect on not only BAME diversity but on tackling socio-economic exclusion too.
All evidence shows that work follows the money. When commissioners with autonomy and budget control live in the Nations and Regions (N&R) then production prospers. For example when Jo Street came to Scotland as a full commissioner of Daytime and Entertainment, it was transformational in the Scottish indie sector.

**BBC**

As well as the BBC Scotland channel and its Scottish opt-outs, the BBC is also committed to spend 9% of its network budget in Scotland.

In my experience, the BBC Scotland channel has had a very beneficial effect in the nation. In spite of budgetary challenges, Steve Carson and his commissioning team have engaged with a diverse group of suppliers and have ordered a wide range of shows.

Likewise, we have had excellent relationships with network commissioners in all the genres, both scripted and unscripted and the new democracy of Zoom has, if anything, made them more accessible.

With the BBC, the key need is to see that the targets are met in the spirit as well as the letter of the law, and that brass-plating of all forms is properly policed.

As important, more commissioning editors with budget authority should be located in Scotland. They need to have the authority to greenlight shows, not just development: to be one of the two ticks, along with the channel controller, that commissions a show. This would be great for the individuals concerned, in terms of building their authority, and would also be terrific for the Scottish production base.

Charlotte Moore, now Head of Content at the BBC, said in a speech at the Nations and Regions conference in Leeds two years ago that the BBC would move towards this organically, but so far there has been little progress. Tony Hall, the former Director General, hinted at a significant change to come at the RTS Cambridge conference last September but again that has come to naught.

We would hope, and expect, that the new DG, Tim Davie, will change that.

**Channel 4**

Channel 4 has made a huge commitment to out-of-London (OOL) production, promising 50% OOL by 2023 and 9% in the nations (Scotland, Northern Ireland and Wales). Clearly, as a Scottish company we would welcome a specific Scottish quota. And our task as producers is to ensure the Channel reaches those targets.

Clearly, Channel 4 has gone the furthest of the PSBs in physical relocation with the new HQ in Leeds and the Creative hubs in Glasgow and Bristol. Obviously the process has been disrupted by Covid 19 but we look forward to working with the Channel to develop its Scottish base.
**ITV**

ITV has an OOL quota of 50% but no specific nations’ requirement. Adding a specific nations’ requirement to its PSB commitments would be a significant boost to the Scottish market-place.

The holder of the Scottish licences, STV, does very little commissioning from independents and that little amount is at a very low-cost, so any market intervention in terms of quotas is better aimed at ITV.

**Channel 5**

Although it has a small OOL commitment, Channel 5 makes a real effort with Nations and Regions producers, especially smaller companies and is well-regarded in Scotland. However, this is clearly a policy of the current team headed by Ben Frow and not backed by statute. An obligation similar to those held by the other PSBs, and a dedicated commissioner in Scotland would ensure that the progress made could not be reversed by a future management team.
INTRODUCTION

The Committee has agreed to hold an evidence session on public service broadcasters’ commissioning processes. The Committee will hear from—

- Alan Clements, Managing Director, Two Rivers Media
- Neil Webster, Managing Director Happy Tramp North
- Claire Mundell, Director, Synchronicity Films

The Committee has explored the screen sector a number of times this session. Much of the Committee’s work on Screen stemmed from the work of the Screen Sector Leadership Group. The group was established following recommendations made by the Session 4 Economy, Energy and Tourism Committee regarding the need for a dedicated screen unit. With regards to commissioning the SSLG’s report stated that:

“At the heart of any successful screen sector is a lively and vibrant television industry. Life for independent television production companies in Scotland, however, can also be precarious. Only a limited amount of commissioning is done by broadcasters in Scotland. Increased investment is needed across the board by all public service broadcasters.”

Ofcom regulates the Public service broadcasting (PSB) across the UK and described the landscape in Scotland in the Media Nations 2020, Scotland Report as follows—

“Public service broadcasting (PSB) is currently provided in Scotland by the BBC, Channel 4 Corporation (C4C), STV, ITV, S4C and Channel 5. While all the BBC TV services are PSB channels, only the main channels of the other broadcasters are. In return for providing PSB services such as news and original productions, these broadcasters receive certain benefits: access to spectrum (the radio waves that support wireless communication) to broadcast their services; prominence on electronic programme guides on television (EPGs); and in the BBC’s case, the licence fee.

“BBC One Scotland and BBC Scotland are available across the country, while STV and ITV provide bespoke news programmes for those who live in the

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1 Screen Sector Leadership Group Report, Jan 2017, pg.7
north of Scotland, central Scotland and the south of Scotland. Channel 4 and Channel 5 provide their public service content on a pan-UK basis."^2

This paper explores the latest data and builds on the previous work of the Committee in this area. The paper is structured into three broad sections: commissioning independent productions, commissioning Scottish productions, and the impact of Covid.

INDEPENDENT COMMISSIONING

Total spend on production in the UK has grown over the past decade. Spend in TV production comes from four main sources: PSBs; the multichannel sector; international broadcasters and subscription video-on-demand services. PSBs provided around £2.5bn of new TV production spend in 2019, which makes PSBs "largest investors in new UK-made content for UK audiences"^3. This is the spend originating from the PSBs and does not include funds from co-producers or tax credits. The Ofcom Media Nations report 2020 states that direct PSB funding has been declining for some years, and indicates that between 2007 and 2019 there was a real terms fall of around 24% (adjusted using CPI). In recent years, the other sectors have been increasing their spend in TV production, which has more than made up for the decline in direct PSB funding.

Content that is made for and broadcast by PSBs is produced both by the broadcasters themselves and by external producers. Channel 4 however, is a publisher/broadcaster^4. The PSBs have quotas requiring them to commission 25% of their original hours from independent producers. Independent is defined for the purpose of these quotas as not being part or fully owned by other broadcasters. This quota, for all PSBs is set out in section 277 of the Communications Act 2003.

The performance against the quota, at a UK level, is set out below. The chart shows the percentage of qualifying hours commissioned from qualifying independent producer.^5 the columns show the percentage of qualifying hours from 2013-2019, grouped by each broadcaster, with the final column showing the 25%. Each broadcaster met the quota of 25%. Channel 4 and Channel 5 appear to have a declining trend of the percentage of qualifying hours commissioned from qualifying independents. It is unclear why this may be the case.

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^2 Ofcom, Media Nations 2020, Scotland Report, August 2020, pg 20
^3 Ofcom, Ofcom Media Nations report 2020, (p78)
^4 “[C4] does not produce its own programmes but commissions them from more than 300 independent production companies right across the UK, making it the major stimulus and outlet for Britain’s highly successful independent production sector. It invests heavily in training and talent development throughout the industry.” https://www.channel4.com/about_c4/information.html
^5 Qualifying hours: first-run PSB network programmes excluding news. Qualifying independent production company: A company not tied to a UK broadcaster through significant common ownership.
In terms of STV, Screen Scotland recently stated that STV "does not have a specific independent production quota under its licence. This seems anomalous given its increasing independence from the other Channel 3 licensee."\(^6\)

Section 285 of the Communications Act requires PSBs to have Codes of Practice for commissioning independent producers which is required to be approved by Ofcom. Section 285 also requires Ofcom to have in place guidance to assist PSBs in drawing up codes. This guidance was last produced in 2007.\(^7\) The guidance sets out expectations in terms of timescale and clarity with respect to rights for broadcast and further use on video on demand platforms. The guidance also states that there should be provision in PSB codes of practice for dispute resolution. Codes of Practice and the PSBs approach to commissioning is published on their websites (see Channel 4, BBC, ITV, Channel 5). Having reasonably similar terms of trade across PSBs and that are stable over time, should lower the costs of negotiation for both parties. PACT has also said that Codes of Practice have enabled independent producers to retain their Intellectual Property rights and has "been a catalyst for the sector to use their asset value to grow their businesses."\(^9\)

PACT’s recent submission to the Digital, Culture, Media and Sport Committee’s inquiry on the future of public service broadcasting also highlighted that the retention of the intellectual property rights led to greater investment. The market is very competitive, and PACT provided evidence that productions rely on secondary

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\(^6\) Submission to the House of Commons’ Digital, Culture, Media and Sport Committee by Screen Scotland

\(^7\) The actual guidance is the annex to the linked document.

\(^8\) The ITV Code of Practice is here.

\(^9\) Submission to the DCMS Committee 2020, (p4)

https://committees.parliament.uk/writtenevidence/7026/pdf/
markets to be profitable; that is, the commissioning fee is not sufficient to cover the cost of the production. PACT stated—

“The importance of secondary sales has increased in recent years as producers are increasingly required to deficit finance productions due to the decline in value of the BBC tariff to the overall budget. In some cases, independent production companies are required to relinquish their production fee and thus rely solely on secondary rights for their return on investment. This has meant that in times of crisis such as the current COVID-19 pandemic the UK production industry has been left more susceptible to the lack of overall reserves after years of prices being driven down by broadcasters like the BBC. This is particularly true for producers in the Nations and regions. BBC Tariff rates in the Nations and Regions across all genres have broadly stayed the same despite inflation and gone down in some cases. For example, in 2010 the BBC had N&R (Nations & Regions) tariffs for a range of different types of factual programming. However, these tariffs have now been replaced by one ‘N&R factual tariff.’ Making it harder to analyse but ultimately resulting in a lower price.”

The value of productions commissioned by the BBC was also highlighted to this Committee by Arabella Page-Croft, from Black Camel Pictures. She said on 5 March 2020—

“The issue that is arising for so many producers in Scotland is that, although we have this new channel, there is no money. For example, I have just done a £4 million deal with Sky on another series that Bob Last and I are working on, but my current deal with BBC Scotland is for £100,000. Producers are having to go elsewhere, because the money is not here.” (Col 18)

BBC Scotland’s Commissioning page provides contact details for the commissioners across different genres and indications of current opportunities. The BBC also has published a timeline for its commissioning process, which provides information for every step in the process.

The BBC’s Commissioning Report 2019 provides a summary of the BBC’s activities in Scotland (p21). This stated—

“In 19/20 we produced 1,400hrs of originated programming across BBC One Scotland and the new BBC Scotland Channel. The BBC Scotland Channel transmitted 890 originated hours (50% of its schedule). This was provided by around 80 suppliers from across the sector, representing a mix of both established and new companies.”

The Commissioning Report stated that 99% of first run originated programmes were made in Scotland. The BBC held two industry-wide briefings in 2019 attended by 132 and 113 producers. This report also stated that 61% of factual programmes were made by independent producers; however, that figure is much smaller for Drama, Entertainment and Sport, where BBC or BBC Studios play a much larger role.
A recent submission to the House of Commons’ Digital, Culture, Media and Sport Committee by Screen Scotland stated—

“While a rich, highly competitive and diverse PSB ecology is one of the UK’s great strengths, the fact that broadcasters remain too focused within London and the South East of England is a weakness.

Commissioning power – the ability to “green light” a project - has become highly centralised since the start of the 21st Century.

To the best of our knowledge the BBC has no network genre controllers outside of London, C4 has one. No UK network PSB has a channel controller based outside of central London. London-to-London patterns of commissioning where London based commissioners commission London based producers remain the norm across all of the PSBS, the creative and economic opportunities the PSBs can enable remain overwhelming centralised within the M25.”

Alan Clements’ submission to the Committee in advance of this meeting stated that “when commissioners with autonomy and budget control live in the Nations and Regions, then production prospers.”

Screen Scotland went onto argue that this situation should change so that those making decisions on programs have a wider geographic spread. Eric Coulter from Surefire Television Productions Ltd told this Committee on 5 March that the “biggest barriers to the growth of indigenous production is a lack of commissioning power.”(Col 16) The following week David Smith from Screen Scotland suggested that things were improving and told this Committee on 12 March that—

“The BBC is genuinely engaged in altering the way that it commissions content across the UK, and there is an authenticity in its approach that was not there previously. However, it is a journey. … Historically, the people have not been here but, interestingly, because of the Channel 4 hub and the work of the BBC, we now have an internal competitive market for commissioning posts in Scotland. That adds a slight delay to the recruitment process, but the aim is definitely to draw more people up here.” (Col 36)

This is an issue that this Committee explored in its 2018 report, Making Scotland a Screen Leader. The BBC described a commission process where genre commissioners liaise with the head of the genre and the “final tick in the system comes from the channel controller”.(See para 222 of the report). The Committee recommended—

“While the Committee welcomes the new channel, we also consider that Scottish content should feature strongly across the whole BBC network. Given the concerns raised about the role of commissioners and the lack of decision making power in Scotland, the Committee calls on the PSBs to set out how their approach to commissioning supports the screen industry in Scotland.”
PSB AGREEMENTS WITH SCREEN SCOTLAND

The MOU between Screen Scotland and the BBC was agreed in 2019 and sets out three shared ambitions—

- Nurture Scottish talent and enable its progression
- Stimulate production growth and economic success across the film and television sectors
- Extend the range of Scottish film and television and its global reach

The BBC made a number of commitments around producing, commissioning and supporting the industry in Scotland. These included—

- Deliver on its commitment to open up 100% of television content to competition in Scotland by 2027, other than where it is not value for money to do so.
- Ensure commissioners with decision-making power in a range of relevant genres visit Scotland to communicate their ambition and programming needs, and actively develop relationships with production companies who have ideas or potential to deliver against them.
- A number of commitments on spend and delivering a minimum number of titles in different genres per year.

The BBC’s Commissioning Supply Report 2019 stated that “in 2019 the BBC met or exceeded its MOU commitments”.

On 1 October 2020, Channel 4 Daytime and Screen Scotland announced a joint £75k investment to fund up to five new developments and one new transmittable pilot from Scotland-based producers and suppliers.

PSB COMMISSIONING IN SCOTLAND

Ofcom reports on both programmes produced for and in regions/nations. Spend on programming for viewers in Scotland rose by £26.3m in 2019 compared to 2018, and was reported as £80.6m. This can largely be attributed to the launch of the new BBC Scotland channel in February 2019. There was a 45% real terms increase in spending on news programming, while spending on genres other than news and current affairs increased by 61%.

Mr Clements’ submission to the Committee stated—

“In my experience, the BBC Scotland channel has had a very beneficial effect in the nation. In spite of budgetary challenges, Steve Carson and his commissioning team have engaged with a diverse group of suppliers and have ordered a wide range of shows.”

In 2019, the combined STV and ITV spend on new content was £9.2m. STV accounts for the majority of Channel 3 spend on programmes specifically for viewers
in Scotland. STV’s strategy for creative and digital growth, announced in 2018, stated that it would allocate “£15m for investment in new content, creative partnerships and the STV Player over the next 3 years.” It is unclear how that statement tallies with a small decrease in real terms spend on programmes between 2018 and 2019.

STV, ITV and the BBC have requirements or commitments in relation to programmes produced for Scotland. STV is required to provide at least 5 hours 30 minutes of programming per week, including four hours of news and 33 minutes of current affairs. STV’s four sub-regions each have at least 25 minutes of bespoke news programming per week. ITV Border are required to provide 3 hours 5 minutes of news per week and an additional 90 minutes of non-news programming specifically for the south of Scotland.

The BBC’s operating license has a number of regulatory conditions in respect to its broadcasting in Scotland. Among other things, this operating licence stipulates that in each financial year the BBC must ensure that in respect of BBC One Scotland and BBC Scotland taken together:

- the BBC must provide a range of genres in its programming that reflect Scotland’s culture;
- in respect of BBC One Scotland, at least 290 hours must be allocated to news and current affairs programmes; and at least 155 hours to non-news programmes;
- in respect of the BBC Scotland channel, there must be at least 212 hours of news shown in peak viewing time in 2019 (and 250 hours after 2019);
- at least 90% of first-run UK originations must be made in Scotland; and
- the BBC must ensure a suitable range of programmes, including news programmes which contain news from across Scotland or reflecting a Scottish perspective.

In terms of hours produced, the establishment of BBC Scotland contributed to a large increase in the number of hours produced by the BBC for viewers in Scotland, rising by 81% to 1,342 hours in 2019. The numbers of hours produced for Scottish audiences by STV fell 41%, with the majority of this fall being in the non-news/non-current affairs category. Ofcom reported that all of the 40 hours of non-news/non-current affairs was produced by STV Productions.

Public service broadcasters are also under obligations to ensure that a proportion of the programmed hours and the money spent on making programmes are classed as being made outside London. In terms of programmes made in Scotland, the nature of this obligation is different for different PSBs. The BBC has specific targets for each of the nations, Channel 4 has an out-of-England quota, but ITV and Channel 5 are not specifically required to make content outside England. Mr Clements’ submission expressed noted the “commitment” and “real effort” of Channel 4 and Channel 5, respectively, to commission Scottish producers, despite not having specific quotas in this respect. Mr Clements stated—
“The holder of the Scottish licences, STV, does very little commissioning from independents and that little amount is at a very low-cost, so any market intervention in terms of quotas is better aimed at ITV.”

Broadcasters determine which region/nation the out-of-London (as defined by the M25) production is counted in. This is not necessarily dependent on where filming or post production takes place. There is a three-part test and two of the three tests must be met for the production to be considered from a region/nation. These tests are:

a) The production company must have a substantive business and production base in the UK outside the M25 (in the region/nation)\(^\text{10}\);

b) At least 70% of the production budget (excluding some specific costs\(^\text{11}\)) must be spent in the UK outside the M25 (in the region/nation); and

c) At least 50% of the production talent by cost must have their usual place of employment in the UK outside the M25 (in the region/nation).

There has been some criticism of this test or the implementation of the test. The report of the SSLG stated—

“It is commonly accepted that the criteria can be interpreted loosely and practices introduced that unfairly inflate the figure. This means that the broadcasters can meet the quota, technically, without any sustainable or strategic benefits to the creative economy in Scotland.”

The SSLG also deplored the “notorious process of ‘Lift and Shift’ has led to dramas commissioned and set in London being sent to Scotland to be produced, helping the quota to be met”.\(^\text{12}\) Lift and Shift is the term used to describe the practice whereby a production is moved from one area (normally London) to the nations and regions to fulfill an out of London quota – some argue that the process seeds indigenous production capacity. This was explored by the Committee in its 2018 report Making Scotland a Screen Leader and the Committee expressed scepticism on whether the practice “has resulted in sustainable and strategic benefits to the screen sector in Scotland”. (Para 236)

Another issue considered by that report was the permanency of production companies’ substantive bases. In a response to an Ofcom consultation in 2018 on a review of regional tv production and programming guidance, STV said—

“Of the 91 productions reported in the 2016 Made Outside London Register as having a substantive base in Scotland, nearly two thirds were made by London-based producers who had set up a sub-office in Scotland. Several of these (Keo North, Shed Scotland, Objective North and Thames Scotland) are no longer active in Scotland. This serves to highlight the fact that it is

\(^{10}\) 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.

\(^{11}\) On-screen talent, archive material, sports rights, competition prize-money and copyright costs.

\(^{12}\) Screen Sector Leadership Group Report, Jan 2017, pg. 8
impossible to achieve longer term growth in the Scottish production sector or develop a mature skills base in Scotland if regional production is dominated by London-based producers whose presence in Scotland does not extend beyond the production in question."

The Committee had recommended in its report that “reporting of what makes a Scottish production is made more robust and that checks on accuracy of the information provided is tightened.” (Making Scotland a Screen Leader Para 238)

Ofcom has issued new guidance on the tests with greater detail. The tests are substantially the same as is requirement for two out the three tests to be met. The Annexe to this paper includes the new tests in full. In addition, Ofcom will introduce spot-checks and a “clear reporting regime”. Details of the outcome of its consultation are published and Ofcom said of its updated approach—

“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.”

The most recent data on regional productions was published by Ofcom last week. There were over 122 productions marked as Scottish productions in the Out of London register, the majority met all three of the tests.

The BBC’s most recent annual report stated—

“Today, over half our spending – and half our teams – are out of London. We have more than doubled the proportion of network TV programmes produced in Scotland, Wales and Northern Ireland in a decade. In this regard, no one does more than the BBC, but we have to work even harder to reach out into all the UK’s communities. We have to do even more to make sure different perspectives and voices are represented, on air and on screen. Our local and nations services need to be truly relevant to audiences in each place. And we must continue to work to address the audience perception and usage challenges we face across the UK’s nations, regions and diverse communities, which are summarised in the following pages.” (p19)

The Committee’s report also explored the portrayal of Scotland on screen and how PSBs reflect Scotland as a nation. Views expressed to the Committee indicated that portrayal is a difficult thing to regulate (see paras 208-212). At the time of the Committee’s report, Ofcom was undertaking a review of “Representation and portrayal on BBC television”. Ofcom’s report on the subject was published in October 2018. Ofcom undertook qualitative and quantitative research on the topic and the report found that, broadly the BBC’s portrayal of geographic and demographic diversity was improving, but could sometimes appear to be inauthentic and a box-ticking exercise. Ofcom found that this authenticity can be improved if the people behind the scenes reflect the diversity seen on screen. Ofcom stated—

“Our findings advocate a more nuanced approach to understanding and measuring representation and portrayal. Labels that group people together based on certain characteristics are not always helpful and can mask
important details and differences. It is also important that programmes reflect more diversity within groups as well as between them. A more granular approach to analysis helps broadcasters better understand their audiences."

The new guidelines for the out-of-London test reference on-screen talent. In the notes to the final test the guidance states—

"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 [off screen talent] 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)."

Ofcom’s Small Screen: Big Debate was a review of PSB between 2014 and 2018. It found that “investment by the PSB channels has also played an important role in supporting the UK’s creative economy, including an increasingly vibrant production sector across the nations and regions.” It provided data on how production spend and hours across different regions and nations has changed between 2010 and 2018.

Production hours by nation
The charts above show that PSB hours of productions in Scotland grew from around 5% in 2010 to 8% in 2013 and remained stable at around 8 or 9% thereafter. The percentage of spend was around 5-6% for the whole period. It is possible to filter the charts by broadcaster on Ofcom’s website. If you were to look only at the BBC, the proportion of qualifying spend and hours that is produced in Scotland is roughly double of all PSBs taken as a whole. Spend and broadcasting hours attributable to Scottish productions in 2019 were 5% and 8%.

IMPACT AND RESPONSE TO COVID

Ofcom’s Media Nations 2020 report set out how the pandemic and lockdown had impacted on broadcasters. It noted that the lockdown gave people, on average, a great deal more leisure time in their homes and there was a consequential increase in the amount of television, including broadcast television, being watched. Broadcast news programmes particularly were widely watched, especially the start of lockdown.

Continuing production of new shows was challenging. PACT worked with UK broadcasters to produce guidelines in May, the British Film Commission first published its guidance on film and high-end TV drama at the start of June. The Scottish Government has also published guidance which refers to PACT and the BFC.

BBC Scotland commissioned topical programmes during the lockdown, including Socially Distant with Susan Calman, filmed from the presenter’s garden and utilising video conferencing. The People’s News: Virus Diaries gave an insight into life in lockdown for families across Scotland, with participants sharing advice on how to cope. The BBC also broadcast content to support home-learning during lockdown.

STV’s Local Lifeline campaign, highlighted the work of 105 Scottish businesses and charities, giving them £900,000 of air time. At the beginning of lockdown, STV announced that it was doubling its Growth Fund to £20m and allocate money from this pot to organisations helping vulnerable people.

In relation to Channel 4, Ofcom has reported—

“Despite having to make substantial budget cuts, Channel 4 has ringfenced its spending and development funds for smaller independent production companies, those based in the nations and regions, and indies led by people from an ethnic minority background.” (p64 and 65)

As members heard last week, the value of advertising spend has decreased in the pandemic. This has also affected public service broadcasters. Ofcom’s Media Nations 2020 report for Scotland stated—

“Although during lockdown broadcasters reached record numbers of viewers, the pandemic has placed a significant financial strain on the industry. This is largely due to a steep fall in advertising revenues as businesses, themselves under huge financial pressures, look for ways to cut costs in a time of deep economic uncertainty.
“In order to address the issue of financial sustainability, STV cut its 2019 shareholder dividend and extended its bank facilities; its leadership team took voluntary salary cuts and a share-placing exercise raised £16.2m to further future-proof its operations.

“The BBC has not been immune to this financial challenge, with a decline in commercial revenues from BBC Studios and the delayed introduction of the new over-75s’ licence fee regime – the BBC now needs to find £125m in cash savings this financial year. The impact of these measures has been felt across the BBC’s services, with BBC Scotland introducing a voluntary redundancy scheme as it looks to reduce its headcount by 60 and reduce spending by £6.2m by March 2021.” (p9)

Elsewhere Ofcom has noted—

“Attempts have been made to mitigate the negative impact of the loss of production on independent producers. The break in production means that the pipeline of new content being made has been disrupted; to ensure that independent producers are ready to get started when restrictions are lifted, various development funds have been made available.” (p64)

For example, in April, the BBC announced a “package of measures to maintain creative health of the independent production sector during the COVID-19 pandemic”. This included doubling the Small Indie Fund to £2m. The Small Indie Fund had been launched in January 2020 and had a “strong focus on diverse and out-of-London producers”.

A submission to the Committee from MCC Accountants stated that “many productions that were shelved through the crisis won’t now resume until 2021.” The submission also stated—

“It is likely production companies will need larger spaces to account for social distancing, and they will need these spaces for longer as everything will take more time under these restrictions. As such, the Scottish Government should ramp up its efforts to create large studio space. If it does not, backlogs could occur and that may well drive these companies to look elsewhere to record their productions.”

The submission from MCC Accountants noted that production companies had accessed the Coronavirus Job Retention Scheme.

In April, Screen Scotland offered development funding of up to £50,000 for independent productions. The total £1m fund was split equally between film and TV projects, and was to encourage Scottish producers to have ideas ready for when production activities could resume.

In addition, the Creative Scotland Bridging Bursary Fund provided one-off bursary payments of between £500 and £2,500 to freelance artists and creative practitioners that have lost earnings as a result of COVID19. The bridging bursar was a £1.5m fund and it is now closed. Recently, Screen Scotland opened the Screen Hardship Fund of £700,000 (part of a £5m package for creative freelancers announced at the
end of August). The Screen Hardship Fund opened for applications on 22 September 2020 and is to “support freelance screen practitioners working in all parts of Scotland’s screen sector who are experiencing immediate financial hardship due to the loss of income as a result of the COVID-19 pandemic.”

Recently the Film and TV Charity announced a new Covid-19 Recovery Fund that will distribute up to £2m to UK film, TV and cinema workers who have been hit hardest by Covid-19, helping to sustain them and their careers through and out of the pandemic. This fund was founded with a £1m donation from Amazon Prime Video and has also received donations from BAFTA, BBC Studios, Sky Studios, Sony Pictures Entertainment and ViacomCBS, as well as private donors.

A submission by PACT to the DCMS Committee at the House of Commons stated—

“The most pressing issue for the UK production and broadcasting sector - to get back to work - is access to affordable insurance and an ability to cover any potential risk liabilities that may occur with restarting production.”

On Friday 2 October, the UK Government opened its Film & TV Production Restart Scheme. This is a “Government-backed £500m scheme for UK film and TV productions struggling to get insurance for Covid-related costs.” Formal commencement of the scheme is conditional upon the European Commission providing State Aid approval.

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SPICe Research
5 October 2020

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ANNEXE

OFCOM’S REGIONAL PRODUCTION AND REGIONAL PROGRAMME DEFINITIONS FROM 2021

In order to count towards the regional production quota by hours and spend, 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.

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’.

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).