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STATUTORY INSTRUMENTS

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**2004 No. 1652**

**BROADCASTING**

**Broadcasting (Original Productions) Order 2004**

*Made* - - - - *28th June 2004*

*Coming into force* - - *1st July 2004*

The Secretary of State, in exercise of the powers conferred upon her by section 278(6) and (7) of the Communications Act 2003 <sup>M1</sup>, and paragraph 8(6) and (7) of Schedule 12 <sup>M2</sup> to that Act, having consulted the Office of Communications, the British Broadcasting Corporation and the Welsh Authority <sup>M3</sup>, hereby makes the following Order, a draft of which has been laid before Parliament in accordance with section 278(9) of and paragraph 8(9) of Schedule 12 to that Act and approved by a resolution of each House of Parliament:

**Marginal Citations**

**M1** 2003 c. 21.

**M2** Schedule 12 to the Communications Act 2003 has effect by virtue of section 338 of that Act.

**M3** Such consultation is required by section 278(8) of the Communications Act 2003 in relation to the powers conferred by section 278(6) and (7); and paragraph 8(8) of Schedule 12 to that Act in relation to the powers conferred by paragraph 8(6) and (7) of that Schedule.

**Citation and commencement**

- 1.—(1) This Order may be cited as the Broadcasting (Original Productions) Order 2004.
- (2) This Order comes into force on 1st July 2004.

**Interpretation**

2. In this Order, “programme” does not include an advertisement.

**Meaning of “original productions” for licensed public service channels**

3. In section 278 of the Communications Act 2003 (programming quotas for original productions), references, in relation to a licensed public service channel, to “original productions” are references to programmes of the following description, namely, programmes which—

- (a) are commissioned by or for a licensed public service channel with a view to their first showing on television in the United Kingdom being either—

- (i) on that channel, or
  - (ii) in the case of a Channel 3 service, on that service or on another Channel 3 service; and
- (b) are European programmes.

#### **Meaning of “original productions” for designated public services of the Welsh Authority**

4. In paragraph 8 of Schedule 12 to the Communications Act 2003 (programming quotas for original productions), references, in relation to the designated public services of the Welsh Authority, to “original productions” are references to programmes of the following description, namely, programmes which—

- (a) are commissioned by or for the Welsh Authority with a view to their first showing on television in the United Kingdom being on one of those services; and
- (b) are European programmes.

#### **Meaning of “European programmes”**

5.—(1) For the purposes of articles 3 and 4, “European programmes” are programmes which are European works.

(2) To the extent specified in paragraph (4), programmes which are not European works may also be treated as “European programmes” by OFCOM for the purposes of articles 3 and 4, provided they are part-qualifying works.

(3) A part-qualifying work is a programme of the following description, namely a programme in the case of which a [<sup>F1</sup>European] producer has, or [<sup>F1</sup>European] producers have, contributed to its total production costs and either—

- (a) a [<sup>F1</sup>European] producer has, or [<sup>F1</sup>European] producers have, made what appears to OFCOM to be a significant contribution to the production of the programme, having regard in particular to—
  - (i) the contribution of that producer or those producers to the total production costs; and
  - (ii) the degree of editorial control that producer has, or those producers have, exercised over the programme; or
- (b) the programme has been made mainly with authors and workers residing in one or more member States.

(4) The proportion of a part-qualifying work which can be treated as a European programme by OFCOM shall be calculated by reference to the duration of the work, being the same proportion as the proportion of the contribution of a [<sup>F2</sup>European] producer or the combined contribution of [<sup>F2</sup>European] producers (as the case may be) in relation to the total production costs of the part-qualifying work.

(5) In this article—

[<sup>F3</sup>“European producer” means a producer—

- (a) who is an individual who is a national of a qualifying State; or
- (b) which is a body corporate formed under the law of a qualifying State and having its registered or head office in a qualifying State and in the case of which the central management and control of the business is exercised in a qualifying State;]

[<sup>F4</sup>“European work” means a European work within the meaning of paragraphs 1(n), 2, 3 and 4 of Article 1 of Directive 2010/13/EU of the European Parliament and of the Council on

the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services]

[<sup>F5</sup>(6) In paragraph (5) “qualifying State” means—

- (a) the United Kingdom;
- (b) any other CTT State, as defined by section 211B(3) of the Communications Act 2003; or
- (c) an EEA State that is not a CTT State, as so defined.]

#### Textual Amendments

- F1** Word in art. 5(3) substituted (31.12.2020) by [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/224\)](#), reg. 1(2), **Sch. 2 para. 1(2)(a)** (with reg. 6) (as amended by [S.I. 2020/1536](#), reg. 5(2)(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in art. 5(4) substituted (31.12.2020) by [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/224\)](#), reg. 1(2), **Sch. 2 para. 1(2)(a)** (with reg. 6) (as amended by [S.I. 2020/1536](#), reg. 5(2)(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in art. 5(5) substituted (31.12.2020) by [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/224\)](#), reg. 1(2), **Sch. 2 para. 1(2)(b)** (with reg. 6) (as amended by [S.I. 2020/1536](#), reg. 5(2)(3)); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in art. 5(5) substituted (1.10.2013) by [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\)](#), regs. 1, **6(2)**
- F5** Art. 5(6) inserted (31.12.2020) by [The Broadcasting \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/224\)](#), reg. 1(2), **Sch. 2 para. 1(2)(c)** (with reg. 6) (as amended by [S.I. 2020/1536](#), reg. 5(2)(3)); 2020 c. 1, Sch. 5 para. 1(1)

*Andrew McIntosh*  
Parliamentary Under Secretary of State  
Department for Culture, Media and Sport

**Changes to legislation:** There are currently no known outstanding effects for the Broadcasting (Original Productions) Order 2004. (See end of Document for details)

F6 SCHEDULE

Article 5(5)

Article 6(1) to (4) of Council Directive 89/552/EEC as amended by Directive 97/36/EC

**Textual Amendments**

**F6** Sch. omitted (1.10.2013) by virtue of [The Broadcasting and Communications \(Amendment\) Regulations 2013 \(S.I. 2013/2217\)](#), regs. 1, **6(3)**

**“Article 6**

- 1.** .....
- 2.** .....
- 3.** .....
- 4.** .....”

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, which comes into force on 1st July 2004, defines programmes which, in relation to a licensed public service channel, are to be “original productions” for the purposes of section 278 of the Communications Act 2003 (article 3); and programmes which, in relation to the designated public services of the Welsh Authority, are to be “original productions” for the purposes of paragraph 8 of Schedule 12 to that Act (article 4). This is done in connection with setting programming quotas for original productions, for which that Act makes provision.

In relation to both licensed public service channels and the designated public service channels of the Welsh Authority, a programme is an original production if it is commissioned with a view to its first being shown on television in the United Kingdom on the relevant channel or service and if it is also a European programme within the meaning of article 5.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

**Changes to legislation:**

There are currently no known outstanding effects for the Broadcasting (Original Productions) Order 2004.