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**S4C Code of Practice in Commissioning Content from Independent Producers**

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## Introduction

This Code of Practice has been prepared in line with the requirements of Section 285 of the Communications Act 2003 and the guidelines for broadcasters published by Ofcom. It replaces the Code of Practice ('[Commissioning Programmes](#)' and '[Our Relationship with Producers](#)') originally published in 2004.

The S4C Code of Practice is intended to provide clarity about the key principles that apply in the process of commissioning content from independent producers. Read alongside the more detailed [Terms of Trade](#), this Code of Practice provides producers with clear and comprehensive terms for both the commissioning and business relationship. This Code operates in the context of the relevant [S4C Authority Fair Trading Policy](#) and the [S4C Procurement Strategy](#).

## Key principles

S4C is committed to adopting the key principles of this Code of Practice in relation to the commissioning and supply of all content<sup>1</sup>.

S4C's programme service is designed to provide a wide range of programmes for viewers of all ages and interests and in all parts of Wales. S4C's Content Strategy sets out the channel's vision for its services.

As a public service broadcaster funded through grant in aid and commercial income, S4C makes a significant investment in original content, ensuring the quality, range and diversity of programming most relevant to S4C audiences. The vast majority of content is commissioned from the independent production sector and a strong, innovative and creative production sector is crucial in meeting S4C's requirements.

S4C's relationship with the independent production sector is defined in the context of this Code of Practice, the S4C [Corporate Plan](#), Content Strategy and Terms of Trade. They support S4C in:

- meeting its key aim of delivering its public service remit<sup>2</sup> and fulfilling the purposes and characteristics of public service broadcasting;
- promoting stability and contestability in its commissioning of content;
- fulfilling the driving principles of being non-discriminatory and transparent and ensuring equal treatment, mutual recognition and proportionality;
- obtaining services and supplies that represent best value thereby ensuring the most efficient use of public money.

It is S4C's view that all communication and dealings should be fair, consistent and clear at all times, and consistent with the S4C brand. The Code of Practice should be operated in an environment where there is mutual respect and due regard to confidentiality.

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<sup>1</sup> Certain exceptions apply and these are outlined in Appendix A

<sup>2</sup> Provision of a broad range of high quality and diverse programming in a service in which a substantial proportion of programmes consists of programmes in Welsh.[CA03 sch. 12. pt 2]



In line with Ofcom's guidance, the Code describes the main principles and minimum terms for all commissions. S4C will consult with TAC and the independent production sector prior to publishing new or amended Terms of Trade. It is noted that the documents and policies referred to within this Code are reviewed from time to time.

## 1. The Commissioning Process

- 1.1 S4C operates an open and transparent rolling commissioning process for developing and commissioning new ideas and content for S4C. This procedure for awarding commissions is outlined as a staged Commissioning Process, and published on the production website. This also outlines the roles and personnel associated with the process.
- 1.2 The process has been developed to encourage constant/continuous creativity and offers S4C the flexibility to respond to ideas, events and changing audience expectations. S4C's commissioning process does not favour or seek to limit commissioning awards to companies of a specific size, or in any specific location(s). S4C is open to receiving ideas from all producers who are able to meet S4C's commissioning criteria.
- 1.3 Alongside the open commissioning process S4C has also developed a transparent and open tender procedure. The principles and outline stages of the tender process are included in the [S4C Procurement Policy Statement](#) which appears on the S4C tender and production websites. Tenders will be offered in particular circumstances, for example where rights are acquired centrally by S4C or where a volume contract is to be awarded. Each tender bid will be assessed according to published criteria tailored for the individual contract requirements. The process serves to promote contestability in the commissioning of content for S4C.
- 1.4 S4C has an [online facility](#) for submitting both new and developed programme ideas. In general proposals submitted for the first time should be concise and clear. S4C also asks that proposals note the basis on which the idea is submitted, and whether it has been submitted to more than one broadcaster or commissioning body.
- 1.5 S4C will acknowledge receipt of the proposal within five working days, and will respond within six weeks of receipt. Whilst acknowledging the importance of a timely response, S4C may not be in a position to offer feedback or explain reasons for its decision within the same period.
- 1.6 In most cases, producers will develop a project without funds from S4C. Encouragement to do so does not amount to a contractual commitment by S4C. Where S4C contributes to the cost of developing an idea, S4C will expect to own the rights in the development work jointly with the producer.
- 1.7 Decisions relating to commissioning content for S4C's public services are based on numerous factors including editorial judgement. Ideas are assessed taking into consideration the following criteria:
  - ability to meet commissioning aims and targets;
  - availability of appropriate budget for producing the idea;

- the producer's editorial and administrative track record;
  - the potential of the idea to fulfil S4C's key principles and aims.
- 1.8 Where an idea advances to the next stage in the commissioning process, or is awarded a tender, then the producer will be invited to complete an editorial and business brief.
- 1.9 A period of six weeks is allocated to complete the first part of the brief. If the idea is approved then a letter of intent to commission will be issued by S4C at least twelve weeks before the commencement of production, outlining the main terms and conditions of the offer.
- 1.10 The timeline for completing the second part of the brief is detailed in the letter of intent to commission, and will be incorporated within the licence agreement. A contractual relationship between S4C and a producer will not be created until signature by both of a licence agreement. S4C is committed to signature of this agreement at least four weeks in advance of production commencing.
- 1.11 S4C recognises the importance of providing clear feedback about dealings relating to the commissioning and production process. S4C is committed to this key element of the relationship with the production sector.

## 2 Indicative Tariffs and Financial Matters

- 2.1 The process for agreeing the licence terms is outlined in the Stages for Agreeing the Licence Fee. Staff within the Business Affairs directorate has responsibility for the process.
- 2.2 S4C has published a list of [indicative tariffs](#) which give an indication of the price that S4C is prepared to pay for a licence of the primary rights described in Section 3 and in line with the S4C Content Strategy. The indicative tariffs offer a range of prices for different programme genres that S4C commissions.
- 2.3 The indicative tariffs are set by S4C's Business Affairs directorate and are reviewed annually. They are drawn up with reference to the cost of production (on a single commission basis) and previous licence fees paid by S4C.
- 2.4 The indicative tariffs are relevant to the majority of commissions awarded by S4C. They offer a guide and the actual licence fee payable by S4C will be a matter for individual negotiation between S4C and the producer. The amount that S4C will pay will be influenced by a range of factors which include:
- the estimated direct cost of producing the programme;
  - the rights being granted to S4C and/or the extent of the holdback;
  - the commercial potential of the programme, whether in English or Welsh, and the potential for generating third party investment.
  - any production fees payable.

- 2.5 S4C issues letters of intent to producers confirming that, subject to contract, S4C intends to commission a particular programme or series and specifying the key details and terms of the proposed commission.
- 2.6 Where the producer requests a bankable letter (in addition to the letter of intent), then S4C's Business Affairs directorate will where appropriate provide a bankable letter on a timely basis. As a general rule, S4C will adopt and use a form of bankable letter recognised by the main banks. Where the producer requires a different form of document, S4C will discuss with the financial institution the form of any such bankable letter.
- 2.7 Any costs incurred for work carried out in advance of a signed agreement will be the producer's responsibility. In exceptional circumstances where an advance payment is required prior to the agreement being signed, S4C may consider approving advances of up to £20,000 (net). Conditions will apply in such cases.
- 2.8 S4C will generally cash-flow the licence fee in line with progress on the production linked to editorial and financial milestones and paid in arrears. The cash-flow will be agreed in the editorial and business brief. S4C will ensure that payments are made to bank accounts with trust status.
- 2.9 Taking a licence rather than copyright assignment in respect of programming exposes S4C and its public funding to a certain level of risk, in particular where S4C cash-flows the production. Where appropriate therefore S4C will register a charge over the copyright and ensure takeover provisions.
- 2.10 S4C will have rights of audit, details of which will be in the [Terms of Trade](#).

### **3 Primary Rights**

- 3.1 With certain exceptions, S4C commissions programmes on the basis that it will acquire a licence granting rights for a defined period. The producer will retain all rights other than those granted to S4C for the period of the licence. The indicative prices referred to in Section 2 outlines the type of fee S4C is prepared to pay for a licence of the Primary Rights as follows:
- 3.2 The licence period will be five years for all programmes other than children's and educational programmes where it will be seven years. S4C shall have a single automatic right to extend the licence period for a further two years for all programmes other than children's and educational programmes where it may extend for a further three years. Extension or renewal of licence is subject to payment of a fee in accordance with terms outlined in the [Terms of Trade](#).
- 3.3 The exclusive right to
  - i) make the programme available on S4C services on all platforms, including the rights to offer additional viewing opportunities, with or without sub-titles;
  - ii) exercise the right to offer programme websites and interactive applications associated with the programme;

- iii) promote the programme, including the consultation and approval for any theatric or non theatric screenings of the programme;
  - iv) authorise off air recording of the programme by educational establishments;
  - v) seek sponsorship for S4C's exploitation of the programme;
  - vi) exercise the right to exploit new media rights in accordance with the terms set out in the Terms of Trade;
  - vii) commission Welsh language sequels based on the programme, the producer having first option to produce such sequels.
- 3.4 The non-exclusive right to:-
- i) assuming that the producer decides not to invest in the cost of producing such material, and provided that it does not cut across any commercial plans by the producer, exploit the merchandising, publishing and/or audiovisual products rights in and to the programme during the period of the licence to allow for the production and communication or marketing of programme support and marketing material;
  - ii) offer programme related material on generic websites and interactive applications including the S4C provision for learners;
  - iii) where relevant, offer additional audio tracks (subject to negotiation of terms);
  - iv) to use clips from the programme or from rushes material in content for S4C services on payment of a fee published as a [tariff](#);
  - v) exercise all other incidental rights necessary to enable S4C to fulfil its statutory responsibilities or to facilitate the same, such as retaining a copy of the programme for regulatory purposes.
- 3.5 For programme genres other than children's and educational programmes, the licence will provide for three transmission packages. Each package will allow S4C up to five transmissions at any time during the licence period. For children's and educational programmes the licence will provide for unlimited transmissions during the licence period. Additional transmission packages may be licenced subject to payment of a fee in accordance with a [tariff](#).
- 3.6 If it is decided to transmit children's programmes and/or educational programmes as part of S4C's general schedule rather than within blocks of the schedule customarily dedicated children's/educational programming, S4C will make a bonus payment to the producer in order to secure the rights to three transmission packages of as outlined in paragraph 3.5. The bonus payment will be in line with a [tariff](#) incorporated within the Terms of Trade.
- 3.7 S4C has statutory obligations to provide signing and audio description in respect of a proportion of its programming. S4C may transmit the programmes with in-vision signing (and to reduce the picture size of the programme to accommodate the signer for this purpose) or with audio description in recognised slots or blocks

in the schedule. Such a transmission will not be deemed to form part of the licensed packages of broadcasts.

- 3.8 In certain cases S4C may be prepared to agree commercial terms for rights arrangements that go beyond this minimum level.

## 4 Holdbacks

- 4.1 S4C will require a holdback (i.e. exclusivity) on
- 4.1.1 the transmission of any language version of the programme by any UK broadcaster until expiry of 5 years from S4C's first transmission of the programme (or the last episode in the case of a series);
  - 4.1.2 any other exploitation in the UK until the expiry of 7 clear days from S4C's first transmission of the programme (or the last episode in the case of a series).

S4C shall have a single automatic right to extend such exclusive holdback period, subject to negotiation of terms as outlined in the [Terms of Trade](#) as noted in 3.2..

- 4.2 In respect of the right to online catch up S4C will require exclusivity until the expiry of 35 clear days from S4C's first transmission of the programme (or the last episode in the case of a series). Further, S4C will require exclusivity in the case of children's programmes and educational programmes for a period of 35 days (maximum) on two occasions only during any year when the relevant programme is transmitted.
- 4.3 The holdback safeguards the exclusivity in the rights required by S4C. However in some cases S4C may be prepared to reconsider the holdback so as to permit a version of the programme (other than the Welsh version) to be transmitted by another UK broadcaster before the end of the licence period. S4C would expect any agreement to waive the holdback to be on commercial terms. In this respect S4C has published a Policy for the Early Release of Holdback, ensuring that producers are clear what criteria S4C will apply in reviewing the exclusive rights and outline the procedure for applying for an early release.
- 4.4 Where S4C commissions a sequel to a programme or series then S4C will seek to ensure a holdback against UK transmission in any language of all earlier programmes and series based on the same format. The terms of such holdback will be considered at the same time as the commissioning process for the sequel and will be in addition to the right to extend the holdback as outlined in 4.1 above.
- 4.5 As S4C also applies the principles of this Code of Practice to co-produced content, the Early Release of Holdback policy offers clarity on the S4C exclusive window for rights in co-funded or exploited content.

## **5 Development Funding**

- 5.1 Where S4C contributes to the cost of developing an idea, S4C will expect to own the rights in the development work jointly with the producer. In such circumstances, neither party should exploit the rights in the development work without the permission of the other.
- 5.2 S4C will have the first option to commission a programme based on the development work. If S4C does not do so within 12 months of the delivery of the developed idea, then the producer shall have the right to request a re-assignment of the S4C rights in the development work and to offer the idea to another broadcaster, on the understanding that the producer and S4C will agree on terms to include appropriate repayment of S4C's contribution to the development work.
- 5.3 Where an idea has been developed with funding from S4C, the producer may offer the programme to S4C in accordance with this Code of Practice on the understanding that the contribution to the development work is acknowledged in some way. S4C's contribution to the work can be acknowledged in any one or more of the following ways:
- a reduced licence fee for the programme
  - repayment to S4C of a sum equivalent to S4C's contribution to the development work;
  - rights in the programme over and above the primary rights;
  - a higher share of net receipts.

## **6 Skills and development**

- 6.1 As a precondition of all commissions, the producer will provide a skills and training needs analysis to the framework body responsible for identifying and collating training needs data in Wales.

## **7 Editorial control and compliance**

- 7.1 S4C will have editorial approval in the programmes commissioned for S4C, including the content commissioned for S4C's online services.
- 7.2 Content commissioned shall comply with S4C Policies, Guidelines and applicable Codes.

## **8 Net Receipts**

- 8.1 S4C will share in the net receipts from the exploitation of programmes that it commissions. S4C's share of net receipts shall (unless otherwise agreed with the producer) be as follows:-

- 8.1.1 where S4C contributes to the cost of a pilot programme 20% in whole or in part
- 8.1.2 where S4C does not contribute to the financing of a 15% pilot programme.
- 8.2 S4C reserves the right to audit the allocation of net receipts, to ensure that the levels of fees attributed to sales are within the normal scope of industry rates and reasonable.
- 8.3 The income received by S4C from exploiting the new media rights will (after deduction of costs) be shared equally between S4C and the producer. Income derived by S4C from exploiting the merchandising rights and the theatric rights shall be divided as agreed on a case by case basis. Otherwise, any income (if any) earned by S4C from exercising the S4C rights will be the absolute property of S4C and S4C will not be expected to account for it.

## **9 Resolving Issues or Disputes**

- 9.1 In the event that a difference of opinion arises the producer should, in the first instance, attempt to resolve the matter in good faith with the members of staff with whom it has been negotiating the commission.
- 9.2 Where the matter cannot be resolved in this way, it should be referred to the Director responsible for the policy or process, and thereafter (if still unresolved) to S4C's Chief Executive.
- 9.3 If the producer remains unhappy with the decision of the Chief Executive, the producer may appeal under that part of the S4C Complaints Procedure<sup>3</sup> relating to appeals.
- 9.4 Parties will be responsible for their own costs in relation to any dispute.

## **10 Communication, Monitoring and Review**

- 10.1 S4C has a dedicated [production website](#). This facility supports the communication and flow of information with the whole content supply chain. It provides a platform for published documents and guidelines, news and contact details and for all tenders published by S4C.
- 10.2 S4C will continually review the facility to maximise its efficiency. The website does not replace direct contact or communication.
- 10.3 Liaison meetings take place between S4C officers and TAC. The form and frequency of such meetings will be agreed between both parties, and will include a review of the operation of the Code of Practice and Terms of Trade. The minutes are made available on the S4C production website.

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<sup>3</sup> [http://www.s4c.cymru/e\\_complaints.shtml](http://www.s4c.cymru/e_complaints.shtml)



- 10.4 S4C will prepare an annual report on the commissions entered into during the period, for internal review. Further details are noted in Appendix B.
- 10.5 S4C will also supply an annual report to Ofcom summarising the data provided in the internal review and in accordance with Ofcom's specification and timetable.
- 10.6 The Code of Practice will be reviewed and updated regularly by S4C. Any amendments to the Code of Practice will be approved by Ofcom. The Code of Practice will be published on the S4C production website.

## **Appendix A**

### **Exclusions**

The following fall outside S4C's Code of Practice:-

1. the programmes supplied by the BBC to S4C pursuant to the Broadcasting Acts 1990 and 1996;
2. any programme or series where the producer does not own or control the necessary rights in the programme idea or format (including where S4C has acquired or licensed the necessary rights directly)\*;
3. all programmes commissioned from a supplier that is not classified as an 'independent producer' according to Ofcom's Guidelines<sup>4</sup>;
4. programmes which the producer chooses to offer to S4C on the basis of a full assignment of copyright;
5. programmes where S4C needs to own or control the necessary rights to ensure continuity between successive contracts for the service and to avoid such material being used by others\*;

although S4C would expect the commissioning of the above programmes and related content to follow the key principles of this Code of Practice.

\* such rights conditions to be disclosed in any invitation to commission or tender

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/>

## **Appendix B**

### **B.1 Scope of monitoring and reporting**

The following data will be collated and presented to the S4C Board of Directors in a quarterly internal review:

- The performance against the set of targets outlined in this S4C Code of Practice, as detailed in B.2 below;
- The number and value of programme commissions from independent producers under the rolling commissioning and tender processes;
- A break down of the programme commissions categorised by different types of rights deal (i.e. licence agreements, full assignment of rights agreement, co-funded commissions etc.);
- Instances where the licence fee falls outside the published Indicative Tariffs;
- Instances where the Primary Rights package has been varied or negotiated;
- The number of times Primary Rights licences have been extended.
- Details about any issues and/or disputes arising from the operation of the Code.

The conclusions of this review will be used to inform the outcome against the relevant targets in the S4C Corporate Plan<sup>5</sup>.

S4C will prepare an annual report on the commissions entered into during the period (and based on the above) in accordance with Ofcom's specification. This report will be provided to OFCOM within the agreed timetable.

### **B.2 Targets incorporated within the S4C Code of Practice**

1. S4C will acknowledge receipt of new ideas proposed within five working days, and will respond within six weeks of receipt.
2. The Letter of Intent will be sent by S4C at least twelve weeks before the commencement of production.
3. S4C is committed to signature

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<sup>5</sup> [http://www.s4c.cymru/abouts4c/authority/pdf/e\\_corpplan2011.pdf](http://www.s4c.cymru/abouts4c/authority/pdf/e_corpplan2011.pdf)