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**S4C Commissioning Code of Practice**

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This Code of Practice (the code) is intended to provide guidance to the independent television production sector about the key principles and processes applied by S4C in the commissioning of television programmes for broadcast on the S4C public service television channel<sup>1</sup>. The code has been prepared in accordance with the requirements of section 10, Part 2, Schedule 12 of the Communications Act 2003 and guidelines for broadcasters published by Ofcom.

This code replaces the "S4C Code of Practice in Commissioning Content from Independent Producers – Second Edition" published April 2010.

## **1. Core principles**

S4C's public service remit pursuant to the Communications Act 2003 (as amended) includes the provision of a broad range of high quality and diverse programming in a service in which a substantial proportion of the programmes are in Welsh<sup>2</sup>.

S4C is the only dedicated Welsh language television channel in the world. It does not have any in-house programme production interests, S4C commissions the majority of its original programming from the independent production sector, save for programmes supplied to S4C by the BBC pursuant to the Broadcasting Acts 1990 and 1996 and a limited number of acquired programmes.

In order to fulfil its key statutory functions, S4C has a unique role in ensuring that an independent production sector with Welsh language capabilities continues to operate effectively and efficiently. It is in the interests of S4C and its audiences to encourage and enable investment and innovation in Welsh language programming.

This code reflects S4C's intention that all dealings with the independent production sector should be fair, consistent and clear.

S4C commits to deal with the sector in an environment where there is mutual respect and due regard to confidentiality. S4C will consult with TAC and the independent production sector prior to publishing new or amended Terms of Trade.

This code does not apply to those excluded programmes as set out in part 4.9 nor does it apply to commissions or content for digital only platforms<sup>3</sup>.

## **2. Commissioning Process**

S4C operates a rolling open commissioning process for developing and commissioning new ideas and content for S4C. 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 will communicate its television programme strategy and major commissioning objectives to the production sector through regular briefing sessions to the sector, in co-operation with TAC and regular news bulletins on the S4C Production Website.

Producers must submit new programme ideas to S4C through S4C's online proposals system and can be submitted at any time. All new ideas are directed to the most

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<sup>1</sup> This Code of Practice does not apply for content commissioned by S4C for non-broadcast services e.g. web-sites, video-on-demand or mobile applications.

<sup>2</sup> Communications Act 2003 (as amended) Schedule 12

<sup>3</sup> Nevertheless, digital content which is ancillary to programmes made for broadcast will be processed as part of the programme idea.

appropriate programme commissioner for consideration and all new programme ideas will follow the pathway set out in the document entitled "Staged Commissioning Process" published on the S4C Production Website.

The Staged Commissioning Process document outlines the roles and personnel associated with the process for each programme and timescales for:

- acknowledgement to a programme idea
- initial response to a programme idea
- confirmation of formal commission
- finalisation of a contract

In summary, S4C will aim to acknowledge receipt of submissions within one week of receipt. S4C will confirm whether a submission has been rejected or whether S4C wishes to express an interest in the programme 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.

S4C commits to achieving responses within the published timescales provided that information requested by S4C from independent producers is provided in a timely manner to enable S4C to meet the published time limits.

S4C and an independent producer may, from time to time, agree to vary the timescales in specific circumstances where the nature of the programme idea requires different timescales.

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 requirements.

S4C has adopted the "APC Code of Practice for the submission of film and programme proposals for the UK Film, radio and television industry". Accordingly, S4C agrees to:

- adopt and maintain internal procedures that ensure as far as reasonably possible the appropriate confidentiality of the proposal;
- adopt and maintain internal procedures whereby proposals are logged;
- provide a response to the proposal whether by way of rejection or to indicate interest by email within a reasonable time following receipt and in accordance with any published timetable issued from time to time by S4C;
- return any digital or other material submitted with any proposal which has been rejected; and
- maintain a dispute resolution procedure.

A transparent and open competitive process may be conducted by S4C from time to time, in certain circumstances, for example where rights are acquired centrally by S4C. Each competitive process will be administered according to published criteria and timescales tailored for the individual contract requirements. The process serves to promote contestability in the commissioning of content for S4C.

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 requirements.

### **3. Editorial Control and Compliance**

S4C will have editorial control over all content commissioned, including multiplatform and interactive elements of any programme commissioned.

S4C will require independent producers to ensure that all content commissioned complies with all published S4C Policies and Guidelines available on the S4C Producer's Website and Guidelines and Codes issued by Ofcom and any other appropriate body.

#### **4. Rights**

S4C seeks to offer simple standard agreements to producers in accordance with the S4C General Terms.

S4C's objective is to secure the rights it needs for the operation and administration of S4C public services, both current and envisaged, including S4C, S4C HD, S4C on-demand services and associated multi-platform services.

S4C is in a unique position in that it is the only Welsh language television channel in the world. To this end, it is an aspiration of S4C to reach out to the Welsh speaking diaspora and UK based Welsh speakers travelling throughout the world and to make Welsh language programming available worldwide, where rights permit.

In the majority of cases, S4C commissions programmes on the basis that the producer or rights owner will grant to S4C a licence of the following Primary Rights for a defined period.

In the mutual interests of S4C and the independent production sector, S4C is committed to finding ways of making Welsh language content available in secondary markets within the UK and to making Welsh language content available to Welsh speaking diaspora worldwide. To this end S4C will also seek to obtain a licence of the Secondary Rights for S4C programmes.

Producers will have ultimate control over whether they choose to grant S4C the Secondary Rights and there will be no obligation on independent producers to grant the Secondary Rights to S4C. Producers will be entitled to negotiate the terms of the Secondary Rights and S4C will expect no greater terms than those generally negotiated with third party distributors.

Setting out the core licence terms below does not preclude S4C from coming to bespoke agreements covering a broader or different range of rights following negotiations and taking into account any unique circumstances or opportunities of any particular programme.

##### **4.1 Licence Period**

The licence period will be five years for all programmes other than children's and educational programmes where it will be seven years.

On payment of the Extension/Renewal Fee, S4C shall have an 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.

Where S4C wishes to extend the term of the licence for a further period or purchase an additional package of rights in a programme in circumstances where the original licence has expired, S4C shall be entitled to make a request to the producer to extend the licence period or purchase an additional package of rights on the basis of the Extension/Renewal Fee outlined in the S4C Tariffs and Fees document. Any subsequent extension of the licence period shall be subject to negotiation between S4C and the

producer. If the producer agrees to a further package of rights or a further extension of the licence period, S4C and the producer will enter into an additional agreement.

#### 4.2 Primary Rights

The Primary Rights shall be on an exclusive basis within the UK for each S4C programme during the licence term:

- An exclusive licence to broadcast the programme fifteen (15) times during the licence period in the UK;
- Rights to make the programme available on all platforms operated by, on behalf of or under licence from S4C, including the rights to offer additional viewing opportunities with or without sub-titles, catch up services and archive services;
- Rights to offer additional audio tracks e.g. English language audio tracks;
- Rights to use the programme (including clips, extracts and previews in accordance with the Clips and Rushes Policy [http://www.s4c.cymru/media/media\\_assets/2016\\_07\\_01\\_Polisi\\_Defnyddio\\_Clipiau\\_a\\_Deunydd\\_Crai\\_S4C\\_Saes.pdf](http://www.s4c.cymru/media/media_assets/2016_07_01_Polisi_Defnyddio_Clipiau_a_Deunydd_Crai_S4C_Saes.pdf)) for promotional purposes to promote the programme and S4C's services generally on all platforms and media;
- Right for S4C, in consultation with the producer, to arrange theatrical and/or non-theatrical exhibition of the programme;
- the right to authorise off air recording of the programme by educational establishments and the non-exclusive right to provide copies of programmes to third party establishments and organisations that have an educational or archiving purpose;
- Rights to seek sponsorship for S4C's exploitation of the programme on S4C's services;
- Rights to commission Welsh language sequels based on the programme, the producer having first option to produce such sequels;

all as more specifically set out in the Programme Licence Agreement

#### 4.3 The Secondary Rights

The duration and exclusivity of the Secondary Rights shall be subject to negotiation between S4C and the producer in each case and may be granted by the producer on an exclusive or non-exclusive basis. Where S4C seeks to act as a distributor of content for onward distribution, it will not be granted any greater rights than those generally afforded to a third party distributor. The producer will be free to elect whether or not it grants S4C the Secondary Rights.

The Secondary Rights shall be all rights not set out above as Primary Rights and shall include the following (without limitation):

- international distribution rights via any medium or platform;
- other distribution and merchandising rights including DVD, VOD, AVOD and SVOD; and
- programme and clip sales rights to third parties in the UK and worldwide.

The exercise by S4C of the rights set out above will be subject to S4C and the producer agreeing suitable arrangements for ensuring payment of appropriate clearance, repeat and residual payments.

In accordance with the Terms of Trade, the Secondary Rights are available for exploitation by the Producer outside the UK 24 hours after first broadcast of the programme on S4C and the Secondary Rights are available for exploitation by the Producer within the UK:

- i) at the end of the licence period for secondary programme sale rights of the programme (and any foreign language programme based on the format) for television exploitation and online streaming in the UK (whether VOD, SVOD, AVOD or other streaming services);
- ii) any time after 7 days after the last episode of the programme is first broadcast on S4C for secondary sales via DVD, DTO and paid for VOD available in the UK; and
- iii) 24 hours after first broadcast of the programme on S4C for all merchandising exploitation in the UK.

The producer retains control over the Secondary Rights and exploitation outside the UK and any negotiation between the producer and S4C in relation to exercise of the Secondary Rights will include a discussion as to the exclusivity of the distribution arrangement with S4C and the duration of any such rights granted to S4C.

#### 4.4 Early Release of Rights

Where the producer wishes to exploit the programme, format or concept or any part thereof within the UK during the licence period, the producer will need to secure S4C's prior written consent and agree a variation to the standard licence terms.

S4C does not intend to retain exclusive rights where S4C has confirmed that it has no intention to exercise such rights itself. The principles considered by S4C when deciding whether to release rights early are set out in the S4C Early Release Policy [http://www.s4c.cymru/media/media\\_assets/Early\\_Release\\_Policy.pdf](http://www.s4c.cymru/media/media_assets/Early_Release_Policy.pdf).

#### 4.5 Children's and Educational Programmes

If S4C elects 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 transmit the programme outside the dedicated children's/educational slot. Such bonus payment shall be in line with a published tariff.

#### 4.6 Access Services

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.

#### 4.7 Exploitation

Where the producer exploits the programme, S4C shall be entitled to a percentage share in the net income arising from such exploitation in order to deliver value back to the public purse and to acknowledge S4C's support for the programme. The actual percentage share of revenue payable to S4C will be set out in the programme licence agreement.

Where the Producer chooses to grant to S4C the right to make the programmes available for purchase on a commercial basis as part of the Secondary Rights, S4C shall retain a distribution fee, which shall be no more than the industry standard, and shall pay a percentage of all net income to the producer as set out in the secondary rights agreement.

#### 4.8 Third Party Financing

The producer shall be entirely responsible for negotiations with third party financiers and/or distributors. Negotiations between the producer and SDML (S4C's commercial arm) shall be conducted separately from negotiations with S4C for the licence fee.

In entering into multi-party financing arrangements for an S4C programme, S4C will expect to enter into licensing arrangements securing to S4C the rights set out in this Code of Practice. However, the requirements of a third party financier/ broadcaster may require a different deal in relation to the S4C rights package and/or the rights of the producer to exercise the Secondary Rights. In these circumstances each broadcaster/financier's rights packages and revenue participations may be negotiated on a case by case basis taking into account each party's requirements.

#### 4.9 Exclusions

These terms shall not be applicable in relation to:

- the programmes supplied by the BBC to S4C pursuant to the Broadcasting Acts 1990 and 1996;
- 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)<sup>4</sup>;
- all programmes commissioned from a supplier that is not classified as an 'independent producer' according to Ofcom's Guidelines<sup>5</sup>;
- programmes which the producer chooses to offer to S4C on the basis of a full assignment of copyright;
- 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 where appropriate.

### 5. Indicative Tariffs

The licence fee payable by S4C will be negotiated between S4C and the producer.

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. The indicative tariffs offer producers an idea of the range of prices of different programme genres that S4C commissions. The indicative tariffs are drawn up with reference to the cost of production (on a single commission basis) and previous licence fees paid by S4C for similar programmes. The indicative tariffs are not intended to be binding on S4C.

The amount of the licence fee will be influenced by a range of factors which include:

- the editorial specification;
- the estimated direct cost of producing the programme;
- S4C's indicative tariff for the programme;
- the rights being granted to S4C and/or the extent of S4C's exclusivity;
- number of episodes;
- the requirements of the S4C schedule;
- the commercial potential of the programme, whether in English or Welsh, and the potential for generating third party investment;
- funding available from third party sources; and

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<sup>4</sup> The relevant terms of acquisition of such rights shall be disclosed in any competitive process, where appropriate

<sup>5</sup> The Broadcasting (Independent Productions) Order 1991 (as amended)

- any production fees payable.

S4C reserves the right to request producers to provide the proposed budget for the programme.

Once a licence fee is agreed, S4C does not expect such a fee to change during the course of production except with the prior written agreement of S4C following editorial changes approved by S4C in advance.

## **6. Payment for programmes**

Usually S4C will cashflow the licence fee in line with editorial and financial milestones. The cash-flow will be agreed as part of the contract negotiations. S4C may require the producer to open a trust account in favour of S4C.

In some circumstances it is possible that S4C will not be able to cash-flow the entire licence fee and, in those circumstances, S4C and the producer will agree on appropriate cash-flow arrangements as part of the process of agreeing the Editorial and Business Brief. S4C may provide a letter of confirmation to a bank in connection with the production where requested by the producer.

By agreeing to cashflow the licence fee in advance and taking a licence of rights rather than an assignment of copyright in the programme, S4C is exposing itself to a certain level of risk. S4C may therefore register a charge over the copyright in the programme and/or ensure robust takeover provisions where appropriate.

Where third party financiers are involved in the financing of an S4C commissioned programme and S4C is required to cashflow the licence fee, S4C may require additional safeguards and documents to ensure the security of the third party financing. S4C will require additional documentation to secure the position of S4C's investment as against any third party financier.

In exceptional circumstances, where the producer requires an advance payment to defray the proper costs of production prior to the programme licence agreement being ready for signature, S4C may consider approving advances of up to £20,000 (net). Conditions will apply in such circumstances.

## **7. Development**

In most cases, producers will develop a project without funds from S4C. Encouragement by S4C to undertake development work does not amount to a contractual commitment by S4C to fund the development work or to commission a programme. Investment in development will be at the producer's own risk.

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 is able to exploit the rights in the development work without the permission of the other.

Where S4C finances the development work, S4C will have the first option to commission a programme based on that development work. The exercise of such option will be subject to agreement of a licence fee. The development costs (including any script fees) will need to be included as part of the costs of the programme and S4C's pre-payment of any development fee will need to be acknowledged and form part of the final licence fee for the programme.

If S4C does not exercise its option to commission within 12 months of the delivery to S4C of the development materials, then the producer shall have the right to request a re-assignment of S4C's rights in the development work. In these circumstances, development moneys paid by S4C shall be repayable on the first day of principal photography.

## **8. Producer Requirements**

In order to ensure the effective and timely transfer of information and effective co-operation between S4C and the producer, S4C expects the producers to do the following:

- always submit programme ideas via S4C's Online Proposals System and include all information requested on the online proposal form including realistic and true budget estimates;
- complete the editorial and business brief within the timelines required by S4C in consultation with the Commissioner and Business Affairs team;
- ensure that their production teams have received all appropriate training and implement the requirements of the Ofcom Broadcast Code, health and safety legislation, child protection legislation (including the S4C Child Protection Policy) and any other relevant legislation and/or guidance;
- deliver programmes in accordance with S4C's technical requirements, at the contracted date and for the agreed licence fee in accordance with the Editorial and Business Brief;
- ensure that all relevant paperwork required by S4C is delivered on time and without exception;
- ensure timely delivery of high quality promotional materials in accordance with S4C's delivery requirements including stills, clips, behind the scenes video clips, promotional clips which will all be suitable for use on social media and/or in conjunction with S4C's on demand service;
- co-operate with S4C in order to ensure effective promotion and marketing of programmes including appropriate use of social media and collaborate with the S4C marketing team to ensure opportunities for S4C to create marketing materials using key contributors to the programme, where appropriate; and
- deliver a final cost report within 3 months from delivery of the programme to S4C; and
- grant to S4C the right to audit the accounts of the producer which relate to the S4C programme.

## **9. Resolving Disputes**

In the event that a difference of opinion arises between S4C and the producer, the producer should, in the first instance, attempt to resolve the matter in good faith with the members of S4C staff with whom it has been negotiating the commission.

Where the matter cannot be resolved in this way, it should be referred to the Director of Commissioning, and thereafter (if still unresolved) to S4C's Chief Executive.

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>6</sup> relating to appeals.

Both S4C and the producer will be responsible for their own costs in relation to any dispute.

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<sup>6</sup> [http://www.s4c.cymru/e\\_complaint\\_procedure.shtml](http://www.s4c.cymru/e_complaint_procedure.shtml)

## **10. Review, Compliance and Monitoring**

S4C has a dedicated Producer's 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 including awarded commissions.

S4C will prepare an annual report on the commissions entered into during the period, for internal review. Such report will contain the following information:

- The number and value of programme commissions from independent producers and a breakdown of the programme commissions categorised by different types of rights deal (i.e. licence agreements, full assignment of rights agreement, co-funded commissions etc.);
- The average length of licence period for a standard rights package and the number of transmissions;
- 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 or renewed;
- Details about any issues and/or disputes arising from the operation of the Code;
- Number of occasions that S4C and the producers have agreed an early release of rights.
- Review of compliance of S4C in accordance with the commissioning timetable

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.

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 Producer's Website.