

SCHEDULES

SCHEDULE 1

Sections 3, 5 and 6.

CERTIFICATION FOR PURPOSES OF SECTION 72 OF FINANCE ACT 1982 IN CASE OF BRITISH FILMS

Preliminary

1 (1) In this Schedule—

"Commonwealth country" means the United Kingdom, any country for the time being specified in Schedule 3 to the British Nationality Act 1981 (countries whose citizens are Commonwealth citizens), and any territory for whose international relations Her Majesty's Government in the United Kingdom is responsible;

"film" includes any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture;

"maker", in relation to a film, means the person by whom the arrangements necessary for the making of the film are undertaken;

"master disc", in relation to a film, means the original master film disc or the original master audio disc of the film ;

"master negative", in relation to a film, means the original master negative of the film and its soundtrack (if any) ;

"master tape", in relation to a film, means the original master film tape or the original master audio tape of the film ;

"sound recording" means a sound recording which is either an original recording or a re-recording ;

"studio" (except in paragraph 5(1)(b)) means a building or group of buildings constructed or adapted for the purpose of making films therein and includes any land occupied with such a building or group of buildings.

(2) For the purposes of this Schedule a studio shall be deemed to be used for making a film if any part of that film, or of any other film used in making it, consists of photographs taken or sound recordings made in that studio.

(3) Subject to sub-paragraph (4), each part of a series of films shall be treated as a separate film for the purposes of this Schedule.

(4) Where—

(a) any series of films consists of a number of parts (not exceeding sixteen) whose combined playing time does not exceed eight hours ; and

(b) those parts, when shown consecutively in the sequence intended, constitute in the opinion of the Secretary of State a self-contained work,

the Secretary of State may, if he thinks fit, direct that those parts, taken together, are to be treated as constituting a single film for the purposes of this Schedule.

Status: This is the original version (as it was originally enacted).

- (5) Any reference in this Schedule to a master negative, tape or disc certified under paragraph 3(1) or to a certificate issued under that provision includes a reference to a master negative, tape or disc certified in pursuance of section 72(7)(b) of the Finance Act 1982 as originally enacted or to a certificate issued in pursuance of that provision.

Applications for certification of master negatives, tapes and discs

- 2 (1) An application for the certification by the Secretary of State of a master negative, master tape or master disc of a film as a qualifying film, qualifying tape or qualifying disc for the purposes of section 72 of the Finance Act 1982 may be made by any person who has incurred expenditure on the production or acquisition of that negative, tape, or disc.
- (2) In sub-paragraph (1) the reference to the acquisition of a master negative, tape or disc includes a reference to the acquisition of any description of rights in it.
- (3) On an application under this paragraph for the certification of a master negative, tape or disc the applicant shall—
- (a) produce to the Secretary of State such books and other documents relating to it; and
 - (b) furnish to the Secretary of State such other information with respect to it, as the Secretary of State may require for the purpose of determining the application.
- (4) Any information furnished for the purposes of sub-paragraph (3) shall, if the Secretary of State so directs, be accompanied by a statutory declaration as to the truth of the information made by the person furnishing it.

Certification by Secretary of State of master negatives, tapes and discs

- 3 (1) If the Secretary of State is satisfied that a master negative, tape or disc with respect to which an application is made under paragraph 2 is a master negative, tape or disc of a film which, in his opinion, is a British film for the purposes of this Schedule, he shall certify that negative, tape or disc as a qualifying film, qualifying tape or qualifying disc for the purposes of section 72 of the Finance Act 1982.
- (2) If the Secretary of State is for any reason not satisfied as mentioned in sub-paragraph (1) he shall refuse the application.
- (3) If it appears to the Secretary of State that any negative, tape or disc certified by him under sub-paragraph (1) ought for any reason not to have been so certified he shall revoke its certification.
- (4) Where an application is made under paragraph 2 in relation to a negative, tape or disc of a film which has already been certified by the Secretary of State under sub-paragraph (1) on a prior application, the Secretary of State may issue the applicant with a duplicate or copy of the certificate issued on that prior application.

British films for purposes of the Schedule

- 4 (1) Subject to paragraph 5, a film is a British film for the purposes of this Schedule if all the requirements specified in sub-paragraph (2) are satisfied with respect to it.
- (2) Those requirements are—

- (a) that the maker of the film was, throughout the time during which the film was being made, either—
 - (i) a person ordinarily resident in a member State, or
 - (ii) a company registered in a member State, being a company the central management and control of whose business was throughout the said time exercised in a member State;
 - (b) that the studio (if any) used in making the film was in a Commonwealth country or the Republic of Ireland ; and
 - (c) that not less than the requisite amount of labour costs (as determined under paragraph 7) represents payments paid or payable in respect of the labour or services of Commonwealth citizens or citizens of any member State or persons ordinarily resident in a Commonwealth country or a member State.
- (3) For the purpose of determining whether the requirements specified in sub-paragraph (2) are satisfied with respect to any film, any other film used for making photographs depicted as part of any scene in the first-mentioned film shall be treated as part of that film.
- (4) Subject to paragraph 5(4), if on an application under paragraph 2 in relation to a negative, tape or disc of any film the applicant requests the Secretary of State to do so, the Secretary of State shall, for the purpose of determining whether the film is a British film for the purposes of this Schedule, treat the film as if such portions of it as may be designated by the applicant did not form part of it; but the playing time of the portions so designated must not exceed 7 1/2 per cent, of the total playing time of the film.
- (5) Her Majesty may by Order in Council provide for films which are made in accordance with the terms of any agreement between Her Majesty's Government in the United Kingdom and any other government or any international organisation or authority, and which would not, apart from such an Order, be British films for the purposes of this Schedule, to be treated as British films for those purposes.

Excluded films

- 5 (1) A film is not a British film for the purposes of this Schedule by virtue of paragraph 4(1)—
- (a) if parts of the film are derived, as regards the photographs comprised in it, from—
 - (i) any film of which the master negative, tape or disc has already been certified under paragraph 3(1), or
 - (ii) any film the maker of which was not the maker of the first-mentioned film,
 and the playing time of those parts exceeds 10 per cent, of the total playing time of the film ; or
 - (b) if the playing time of so much of the film as consists of photographs taken or sound recordings made in any studio outside the United Kingdom exceeds 7 1/2 per cent, of the total playing time of the film ; or
 - (c) (subject to sub-paragraph (3)) if the playing time of so much of the film as consists of photographs taken or sound recordings made outside the United Kingdom exceeds 20 per cent of the total playing time of the film.
- (2) In sub-paragraph (1)(b) " studio "—

Status: This is the original version (as it was originally enacted).

- (a) in relation to photographs, means any building or group of buildings constructed or adapted wholly or mainly for the purpose of taking photographs therein ;
 - (b) in relation to sound recordings, means any building or group of buildings constructed or adapted wholly or mainly for the purpose of making sound recordings therein.
- (3) Sub-paragraph (1)(c) shall not apply to a film if—
- (a) the preparation for the making of the film was so far as practicable carried out in the United Kingdom ; and
 - (b) the normal laboratory processing work incidental to the making of the film was carried out in the United Kingdom ; and
 - (c) at least 50 per cent, (in terms of value) of the technical equipment used in the making of the film was provided from sources in the United Kingdom.
- (4) In determining the playing time of a film for the purposes of sub-paragraph (1)(c) any portions of the film designated in accordance with paragraph 4(4) shall nevertheless be treated as forming part of the film.

Ascertainment of labour costs and playing time

- 6 (1) For the purposes of this Schedule the labour costs of a film shall be taken to be, subject to paragraph 8, the total amount of the payments paid or payable in respect of the labour or services of persons directly engaged in the making of the film, in so far as those payments are attributable to the making of that film, but shall not be taken to include payments in respect of copyright unless it is copyright in a work created for the purpose of its use in the film.
- (2) For the purposes of sub-paragraph (1)—
- (a) the author of the scenario of a film shall be deemed to be a person directly engaged in the making of the film ;
 - (b) a person shall not be taken to be directly engaged in the making of a film by reason only—
 - (i) that he is financially interested in the making of the film or is engaged in a clerical capacity as a servant of an undertaking concerned with the making of the film; or
 - (ii) that he supplies goods used in the making of the film or is in the employment of a person who supplies such goods ;
 - (c) payments paid or payable to a person who is engaged in an administrative capacity as an officer or servant of an undertaking concerned with the making of a film shall not be taken to be attributable to the making of the film except in so far as they are payments in respect of services directly concerned with the making of that film.
- (3) Subject to paragraph 5(4), in determining the playing time of a film for the purposes of this Schedule any portions of the film designated in accordance with paragraph 4(4) shall be treated as not forming part of the film.

Determination of requisite amount of labour costs

- 7 (1) For the purposes of paragraph 4(2)(c) the requisite amount of the labour costs of a film shall be taken to be (subject to sub-paragraph (3) of this paragraph) whichever is the lesser of the two amounts specified in sub-paragraph (2) of this paragraph.
- (2) The amounts referred to in sub-paragraph (1) are—
- (a) the amount arrived at by applying the fraction three-quarters to the total labour costs of the film, after deducting from those costs, if the applicant on an application under paragraph 2 so desires, the amount of any payment which, as part of those costs, has been paid or is payable in respect of the labour or services of any one person who was not, while engaged in the making of the film—
 - (i) a Commonwealth citizen or a citizen of a member State, nor
 - (ii) a person ordinarily resident in a Commonwealth country or a member State; and
 - (b) the amount arrived at by applying the fraction four-fifths to the total labour costs of the film, after deducting from those costs the amount of any payments which, as part of those costs, have been paid or are payable in respect of the labour or services of any two persons neither of whom was, while engaged in the making of the film, such a citizen or person as is referred to in paragraph (a)(i) or (ii), and at least one of whom was so engaged in the capacity of an actor or actress and in no other capacity.
- (3) If on an application under paragraph 2 in relation to a negative, tape or disc of a film with respect to which the requirement specified in paragraph 4(2)(c) is not fulfilled the Secretary of State is satisfied that the maker of the film took all reasonable steps to fulfil that requirement, and that its non-fulfilment was due to exceptional circumstances beyond his control, the Secretary of State, if he thinks fit, may direct that sub-paragraph (2) of this paragraph shall have effect in relation to that film as if for " three-quarters " and " four-fifths " there were substituted " seven-tenths " and " three-quarters " respectively.

Power of Secretary of State to direct alteration of labour costs

- 8 Where it is material, in connection with an application under paragraph 2 in relation to a negative, tape or disc of a film, to ascertain the labour costs of the film or the proportion of those costs which represents payments in respect of the labour or services of persons of any particular class, then—
- (a) if it appears to the Secretary of State that any sum which, as part of those costs, is paid or payable in respect of the labour or services of any particular person is so- great as not to be a bona fide payment by way of remuneration for the said labour or services, the Secretary of State may direct that that sum, or part of that sum, shall be disregarded in ascertaining the said labour costs or the said proportion thereof, as the case may be ; and
 - (b) if it appears to the Secretary of State that no sum or a sum so small as not bona fide to represent all the remuneration therefor is paid or payable as part of those costs in respect of the labour or services of any particular person, the Secretary of State may direct that such sum, or (as the case may be) such greater sum, as may be specified in the direction shall be treated as so paid or payable.

Determination of disputes

- 9 (1) Any person who is aggrieved by any decision of the Secretary of State to refuse an application under paragraph 2 or to revoke any certification under paragraph 3(1) may, subject to rules of court, apply to the High Court, and the decision of that Court shall be final.
- (2) In relation to any person whose principal place of business is in Scotland, sub-paragraph (1) shall have effect as if for any reference to the High Court there were substituted a reference to the Court of Session.

Regulations and orders

- 10 (1) The Secretary of State may make regulations—
- (a) prescribing the form of applications under paragraph 2 ;
 - (b) prescribing the particulars and evidence necessary for satisfying the Secretary of State that a film is a British film for the purposes of this Schedule ;
 - (c) providing that any statutory declaration which is required by paragraph 2(4) to be made by any person shall be deemed to be properly made if it is made on his behalf by any such person as may be specified in the regulations.
- (2) The Secretary of State with the approval of the Treasury may by order make such modifications of any of the provisions of paragraphs 1 and 4 to 8 as he considers appropriate; and any such order may contain such incidental, supplemental and transitional provisions as he considers appropriate in connection with the order.
- (3) In sub-paragraph (2) " modifications " includes additions, omissions and alterations.
- (4) Any regulations or order under this paragraph shall be made by statutory instrument.
- (5) Any regulations under this paragraph shall be laid before Parliament after being made ; but no order shall be made under this paragraph unless it has been laid before Parliament and approved by a resolution of each House.