

*Draft Order laid before Parliament under paragraph 10(5) of Schedule 1 to the Films Act 1985 for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**1999 No.**

**CINEMAS AND FILMS**

**The Films (Modification of the  
Definition of “British Film”) Order 1999**

*Made* - - - - 1999  
*Coming into force* - - 1999

Whereas a draft of this Order has been laid before, and approved by resolution of each House of Parliament pursuant to paragraph 10(5) of Schedule 1 to the Films Act 1985(1);

And whereas Her Majesty’s Treasury have, pursuant to paragraph 10(2) of Schedule 1 to the Films Act 1985, approved the terms of the Order;

Now, therefore the Secretary of State, in exercise of the powers conferred upon him by paragraph 10(2) of Schedule 1 to the Films Act 1985 and all other powers enabling him in that behalf, hereby makes the following Order—

**Citation, commencement and transitional provisions**

1.—(1) This Order may be cited as the Films (Modification of the Definition of “British Film”) Order 1999 and shall come into force on the day after the day on which it is made.

(2) An application for certification under paragraph 2 of Schedule 1 to the Films Act 1985 (“the 1985 Act”) which is made within the period of twelve months starting with the date of commencement of this Order shall, if the applicant so elects, be determined by the Secretary of State in accordance with Schedule 1 as it stood before the commencement of this Order.

(3) After the commencement of this Order the reference in the definition of “relevant film” in section 3(7) of the 1985 Act to the conditions that must be satisfied under Schedule 1 to the 1985 Act shall be construed as a reference to the conditions that must be satisfied under that Schedule as amended by this Order.

**Modification of Schedule 1 to the Films Act 1985**

2.—(1) The modifications of Schedule 1 to the Films Act 1985 set out in articles 3–9 shall have effect.

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(1) 1985 c. 21.

(2) Schedule 1 as modified by this Order is set out in the Appendix to this Order.

### **Modification of paragraph 1 of Schedule 1**

3.—(1) Paragraph 1(1) of Schedule 1 shall be modified as follows:

(2) After the definition of “film” insert—

““film production activity”, in relation to a film, means any activity undertaken for the purposes of the production of the film;”.

(3) Omit the definitions of “sound recording” and “studio”.

4. For paragraph 1(2) of Schedule 1 there shall be substituted—

“(2) For the purposes of this Schedule the production of a film is completed when the film is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public”.

5. For paragraph 1(4) of Schedule 1 there shall be substituted—

“(4) The Secretary of State may direct that a number of films shall be treated as a single film for the purposes of this Schedule if—

- (a) they form a series with not more than twenty-six parts;
- (b) the combined playing time is not more than twenty-six hours; and
- (c) in the opinion of the Secretary of State the series constitutes a self-contained work or is a series of documentaries with a common theme.”

### **Modification of paragraph 4 of Schedule 1**

6. For paragraph 4 of Schedule 1 there shall be substituted—

“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-paragraphs (2) to (4) are satisfied with respect to it.

(2) The first requirement is that throughout the period during which the film is being made the maker of the film is—

- (a) a person ordinarily resident in a member State; or
- (b) a company which is registered in a member State and in the case of which the central management and control of business is exercised in a member State.

(3) The second requirement is that at least 70 per cent of the total expenditure incurred in the production of the film was incurred on film production activity carried out in the United Kingdom.

(4) The third requirement is 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—

- (a) Commonwealth citizens,
- (b) citizens of a member State, or
- (c) persons ordinarily resident in a Commonwealth country or a member State.

(5) For the purpose of calculating the total expenditure incurred in the production of a film pursuant to sub-paragraph (3), the following shall be disregarded—

- (a) any amount deducted under paragraph 7(2)(a) or, as the case may be, paragraph 7(2)(b) in calculating the amount which is the lesser amount for the purposes of paragraph 7(1);

- (b) any expenditure incurred on the acquisition or licensing of copyright, trademarks or rights of a similar nature, other than copyright in works created for the purpose of their use in the film;
  - (c) any expenditure, including the payment of interest, incurred for the purposes of raising or servicing finance for making the film; and
  - (d) any business overheads attributable to the film.
- (6) A state shall be treated for the purposes of this paragraph as if it were a member State if—
- (a) it is party to an agreement under Article 310 of the Treaty establishing the European Community; and
  - (b) the agreement requires a maker of a film who is ordinarily resident or registered in that state to be treated for the purposes of this Schedule in the same way as a maker of a film who is ordinarily resident or registered in a member State.
- (7) Her Majesty may by Order in Council provide for films to be treated as British films for the purposes of this Schedule if they are made in accordance with the terms of any agreement between Her Majesty's Government in the United Kingdom and any other government, international organisation or authority.”

#### **Modification of paragraph 5 of Schedule 1**

7. For paragraph 5 of Schedule 1 there shall be substituted—

“5.—(1) Subject to sub-paragraph (2), a film is not a British film for the purposes of this Schedule by virtue of paragraph 4(1) if parts of the film are derived, from—

- (a) any film of which the master negative, tape or disc is certified under paragraph 3(1), or
- (b) any film not made by the same maker as the first-mentioned film

and the playing time of those parts exceeds 10 per cent of the total playing time of the film.

(2) The Secretary of State may direct that sub-paragraph (1) shall not apply in relation to a film if in his opinion—

- (a) it is a documentary; and
- (b) its subject matter makes it appropriate for sub-paragraph (1) not to be applied.”

#### **Modification of paragraph 6 of Schedule 1**

8. Paragraph 6(3) of Schedule 1 shall be omitted.

#### **Modification of paragraph 7 of Schedule 1**

9.—(1) Paragraph 7 of Schedule 1 shall be modified as follows.

(2) In paragraph 7(1)—

- (a) for “paragraph 4(2)(c)” substitute “paragraph 4(4)”, and
  - (b) omit the words “(subject to sub-paragraph (3) of this paragraph)”.
- (3) In paragraph 7(2)(a) for “three-quarters” substitute “seven-tenths”.
- (4) In paragraph 7(2)(b) for “four-fifths” substitute “three-quarters”.
- (5) For paragraph 7(3) substitute—

“(3) Paragraph 4(6) has effect for the purposes of this paragraph as it has effect for the purposes of paragraph 4.”

1999

Secretary of State for Culture, Media and Sport

We consent to this Order

1999

Two of the Commissioners of Her Majesty’s  
Treasury

## APPENDIX

### SCHEDULE 1

Sections 3, 5 and 6.

#### CERTIFICATION FOR PURPOSES OF SECTION 72 OF THE 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;

“film production activity”, in relation to a film, means any activity undertaken for the purposes of the production of the film;

“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.

(2) For the purposes of this Schedule the production of a film is completed when the film is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

(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) The Secretary of State may direct that a number of films shall be treated as a single film for the purposes of this Schedule if—

- (a) they form a series with not more than twenty-six parts;
- (b) the combined playing time is not more than twenty-six hours; and
- (c) in the opinion of the Secretary of State the series constitutes a self-contained work or is a series of documentaries with a common theme.

(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 68 of the Capital Allowances Act 1990 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 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 68 of the Capital Allowances Act 1990.

(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-paragraphs (2) to (4) are satisfied with respect to it.

(2) The first requirement is that throughout the period during which the film is being made the maker of the film is—

- (a) a person ordinarily resident in a member State; or
- (b) a company which is registered in a member State and in the case of which the central management and control of business is exercised in a member State.

(3) The second requirement is that at least 70 per cent of the total expenditure incurred in the production of the film was incurred on film production activity carried out in the United Kingdom.

(4) The third requirement is 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—

- (a) Commonwealth citizens,
- (b) citizens of a member State, or

- (c) persons ordinarily resident in a Commonwealth country or a member State.
- (5) For the purpose of calculating the total expenditure incurred in the production of a film pursuant to sub-paragraph (3), the following shall be disregarded—
- (a) any amount deducted under paragraph 7(2)(a) or, as the case may be, paragraph 7(2)(b) in calculating the amount which is the lesser amount for the purposes of paragraph 7(1);
  - (b) any expenditure incurred on the acquisition or licensing of copyright, trademarks or rights of a similar nature, other than copyright in works created for the purpose of their use in the film;
  - (c) any expenditure, including the payment of interest, incurred for the purposes of raising or servicing finance for making the film; and
  - (d) any business overheads attributable to the film.
- (6) A state shall be treated for the purposes of this paragraph as if it were a member State if—
- (a) it is party to an agreement under Article 310 of the Treaty establishing the European Community; and
  - (b) the agreement requires a maker of a film who is ordinarily resident or registered in that state to be treated for the purposes of this Schedule in the same way as a maker of a film who is ordinarily resident or registered in a member State.
- (7) Her Majesty may by Order in Council provide for films to be treated as British films for the purposes of this Schedule if they are made in accordance with the terms of any agreement between Her Majesty's Government in the United Kingdom and any other government, international organisation or authority.

#### *Excluded films*

- 5.—**(1) Subject to sub-paragraph (2), a film is not a British film for the purposes of this Schedule by virtue of paragraph 4(1) if parts of the film are derived from—
- (a) any film of which the master negative, tape or disc is certified under paragraph 3(1), or
  - (b) any film not made by the same maker as the first-mentioned film, and the playing time of those parts exceeds 10 per cent of the total playing time of the film.
- (2) The Secretary of State may direct that sub-paragraph (1) shall not apply in relation to a film if in his opinion—
- (a) it is a documentary; and
  - (b) its subject-matter makes it appropriate for sub-paragraph (1) not to be applied.

#### *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.

*Determination of requisite amount of labour costs*

7.—(1) For the purposes of paragraph 4(4) the requisite amount of the labour costs of a film shall be taken to be 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 seven-tenths 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 three-quarters 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) Paragraph 4(6) has effect for the purposes of this paragraph as it has effect for the purposes of paragraph 4.

*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 such 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 therefore 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.

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## **EXPLANATORY NOTE**

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

This Order modifies the definition of “British film” in Schedule 1 to the Films Act 1985. This Order modifies the definition of “British film” in Schedule 1 to the Films Act 1985. Applications of the definition include the determination of what is a “relevant film” for the purposes of the 1985 Act (see section 3(7)), and the assessment of eligibility for tax concessions under section 68 of the Capital Allowances Act 1990 and section 43 of the Finance (No. 2) Act 1992.

The modified definition retains the previous requirement that throughout the period in which the film is being made the maker of the film must be ordinarily resident in a member State (if an individual), or registered and centrally managed and controlled in a member State (if a company). The previous labour cost requirement is retained with some modifications (see below). The requirement that any studio used in the making of the film be located in a Commonwealth country or the Republic of Ireland is replaced by the requirement that at least 70 per cent of the total expenditure incurred in

the production of the film must be incurred on film production activity carried out in the United Kingdom.

“Film production activity” is defined in relation to a film as any activity undertaken for the purposes of the production of the film.

The definitions of “sound recording” and “studio” are deleted.

The circumstances in which the production of a film is to be regarded as completed are defined as when the film is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

With respect to films produced as a series, the former paragraph 1(4) is amended to allow for up to twenty-six parts running for up to twenty-six hours to be considered as a single film if the Secretary of State is of the opinion that the series constitutes a self-contained work or that it is a series of documentaries with a common theme. Formerly, there could be at most sixteen parts with a maximum playing time of eight hours, and the Secretary of State had to be of the opinion that the films constituted a self-contained work when shown in the intended sequence.

The references to “member State” in paragraphs 4 and 7 of the Schedule is expanded to include states party to association agreements with the European Community, in cases where those agreements require film makers in those states to be treated in the same manner as film makers in member States for the purposes of this Schedule.

As mentioned above, the requirement in the former paragraph 4(2)(b) of the Schedule that the studio (if any) used in the making of the film is in a Commonwealth country or the Republic of Ireland is omitted, and replaced by a requirement that at least 70 per cent of the total expenditure incurred in the production of a film spent on film production activity (as defined in the Order) carried out in the United Kingdom. Total production expenditure incurred in the production of a film is to be calculated disregarding any amount deducted from the total labour costs of the film pursuant to paragraph 7(2) (a) and (b) of the Schedule, any expenditure on the acquisition or licensing of copyright or certain other rights (other than copyright in works created for the purpose of their use in the film), financing costs and business overheads. The former sub-paragraph 4(4) of the Schedule is deleted.

The general limitation in paragraph 5 on the use of visual images from previously-certified films or films made by a different maker is retained. The references to photographs are however deleted. A new provision is inserted allowing the Secretary of State to direct that the limitation in paragraph 5 does not apply in relation to a film if in his opinion the film is a documentary and its subject matter makes it appropriate for the limitation not to apply. The previous paragraphs 5(1)(b) and (c) and 5(4) are deleted.

The previous paragraph 6(3) is deleted, consequent upon the deletion of the previous paragraphs 4(4) and 5(4).

The labour costs requirement is modified by reduction of the percentages in sub-sub-paragraphs 7(2) (a) and (b) from three-quarters to seven-tenths and from four-fifths to three-quarters respectively. Sub-paragraph 7(3) is omitted and sub-paragraph 7(1) amended accordingly.

A transitional provision is included, allowing applicants to elect to proceed under either the original or the amended Schedule during the first twelve months in which the Order is in force.