

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.

DRAFT STATUTORY INSTRUMENTS

2015 No.

CINEMAS AND FILMS

The Films (Definition of “British Film”) Order 2015

Made - - - - ***

Coming into force - - ***

The Secretary of State, in exercise of the power conferred by paragraph 10(2) of Schedule 1 to the Films Act 1985^(a) and with the consent of the Treasury, makes the following Order.

[In accordance with paragraph 10(5) of Schedule 1 to that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.]

Citation and commencement

1. This Order may be cited as the Films (Definition of “British Film”) Order 2015 and shall come into force on the day after the day on which it is made.

Application

2.—(1) The amendments made by this Order have effect in relation to any film other than an excepted film.

(2) A film is an excepted film if—

- (a) the amendments made to Schedule 1 to the Films Act 1985 by the Films (Definition of “British Film”) (No 2) Order 2006^(b) do not apply in relation to it,
- (b) an application for certification of the film was made before the commencement day, or
- (c) the film production company has made an election in relation to the film under paragraph (3).

(3) A film production company may make an election under this paragraph in relation to a film if—

- (a) the first day of shooting (in relation to a documentary or animation) or principal photography (in the case of a film other than a documentary or animation) was before the commencement day, and
- (b) no application for certification of the film was made before the commencement day.

(4) In this article—

^(a) 1985, c. 21; paragraph 10 of Schedule 1 was amended by the Finance Act 2006 (c.25), Schedule 5, Part 2, paragraphs 23(a) and 23(b).
^(b) S.I. 2006/3430.

“application for certification” means an application for an interim or final certificate under paragraph 2 of Schedule 1 to the Films Act 1985, and

“commencement day” means the day on which this Order comes into force.

The cultural test for films other than documentaries and animations

3.—(1) Paragraph 4A of Schedule 1 to the Films Act 1985^(a) is amended as follows.

(2) In sub-paragraph (2), for “16 points” substitute “18 points”.

(3) In sub-paragraph (3)—

- (a) for “16 points” substitute “18 points”;
- (b) in paragraph (a) after “United Kingdom” insert “or another EEA state”;
- (c) in paragraph (b)—
 - (i) for “are British” substitute “are qualifying persons” (in each place);
 - (ii) for “is British” substitute “is a qualifying person” (in each place);
- (d) in paragraph (c) for “British” substitute “qualifying”;
- (e) in paragraph (d)—
 - (i) for “4 points” substitute “6 points” (in both places);
 - (ii) for “the English language or in a recognised regional or minority language” substitute “a language recognised for official purposes in the United Kingdom or another EEA state”; and
 - (iii) for “3 points” substitute “4 points”.

(4) In sub-paragraph (4), for “British culture” substitute one or more of the following—

- “(a) British creativity;
- (b) British heritage;
- (c) diversity”.

(5) For sub-paragraph (5), substitute—

“(5) Up to 5 points shall be awarded in respect of work carried out in the making of the film as follows—

- (a) 4 points if at least 80% of the work carried out on any of the following is carried out in the United Kingdom (unless points are awarded under paragraphs (b) or (c) below, in which case nil)—
 - (i) principal photography;
 - (ii) visual effects;
 - (iii) special effects;
- (b) 2 points if at least 50% of the work carried out on either of the following is carried out in the United Kingdom—
 - (i) principal photography;
 - (ii) special effects;
- (c) 2 points if at least 50% of the work carried out on visual effects is carried out in the United Kingdom;
- (d) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) performing and recording the music score created for the film;
 - (ii) audio post production;

^(a) Paragraph 4A was inserted by S.I. 2006/643 and amended by S.I. 2006/3430.

- (iii) picture post production.”.

The cultural test for documentary films

- 4.**—(1) Paragraph 4B of Schedule 1 to the Films Act 1985^(a) is amended as follows.
- (2) In sub-paragraph (2), for “16 points” substitute “18 points”.
- (3) In sub-paragraph (3)—
- (a) for “16 points” substitute “18 points”;
 - (b) in paragraph (a) after “United Kingdom” insert “or another EEA state”;
 - (c) in paragraph (b)—
 - (i) for “characters” substitute “participants” (in each place);
 - (ii) omit “depicted” (in each place);
 - (iii) for “are British” substitute “are qualifying persons” (in each place);
 - (iv) for “is British” substitute “is a qualifying person” (in each place);
 - (v) for “character” substitute “participant”;
 - (d) in paragraph (c) for “British” substitute “qualifying”;
 - (e) in paragraph (d)—
 - (i) for “4 points” substitute “6 points” in both places;
 - (ii) for “the English language or in a recognised regional or minority language” substitute “a language recognised for official purposes in the United Kingdom or another EEA state”; and
 - (iii) for “3 points” substitute “4 points”.
- (4) In sub-paragraph (4), for “British culture” substitute “one or more of the following—
- “(a) British creativity;
 - (b) British heritage;
 - (c) diversity”.
- (5) For sub-paragraph (5), substitute—
- “(5) Up to 5 points shall be awarded in respect of work carried out in the making of the film as follows—
- (a) 4 points if at least 80% of the work carried out on any of the following is carried out in the United Kingdom (unless points are awarded under paragraph (b) or (c) below, in which case nil)—
 - (i) principal photography;
 - (ii) visual effects;
 - (iii) research and development;
 - (iv) special effects;
 - (b) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) principal photography;
 - (ii) research and development;
 - (iii) special effects;
 - (c) 2 points if at least 50% of the work carried out on visual effects is carried out in the United Kingdom;

^(a) Paragraph 4B was inserted by S.I. 2006/643 and amended by S.I. 2006/3430.

- (d) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) performing and recording the music score created for the film;
 - (ii) audio post production;
 - (iii) picture post production.”.
- (6) In sub-paragraph (7)(b), for “characters” substitute “participants”.

The cultural test for animation films

5.—(1) Paragraph 4C of Schedule 1 to the Films Act 1985^(a) is amended as follows.

- (2) In sub-paragraph (2), for “16 points” substitute “18 points”.
- (3) In sub-paragraph (3)—
 - (a) for “16 points” substitute “18 points”;
 - (b) in paragraph (a) after “United Kingdom” insert “or another EEA state”;
 - (c) in paragraph (b)—
 - (i) for “are British” substitute “are qualifying persons” (in each place);
 - (ii) for “is British” substitute “is a qualifying person” (in each place);
 - (d) in paragraph (c) for “British” substitute “qualifying”;
 - (e) in paragraph (d)—
 - (i) for “4 points” substitute “6 points” in both places;
 - (ii) for “the English language or in a recognised regional or minority language” substitute “a language recognised for official purposes in the United Kingdom or another EEA state”; and
 - (iii) for “3 points” substitute “4 points”.
- (4) In sub-paragraph (4), for “British culture” substitute “one or more of the following—
 - “(a) British creativity;
 - (b) British heritage;
 - (c) diversity”.
- (5) For sub-paragraph (5) substitute—

“(5) Up to 5 points shall be awarded in respect of work carried out in the making of the film as follows—

 - (a) 4 points if at least 80% of the work carried out on any of the following is carried out in the United Kingdom (unless points are awarded under paragraph (b) or (c) below, in which case nil)—
 - (i) shooting;
 - (ii) visual design;
 - (iii) layout and storyboarding;
 - (iv) visual effects;
 - (v) special effects;
 - (b) 2 points if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) shooting;
 - (ii) visual design;
 - (iii) layout and storyboarding;

^(a) Paragraph 4C was inserted by S.I. 2006/643 and amended by S.I. 2006/3430.

- (iv) special effects;
- (c) 2 points if at least 50% of the work carried out on visual effects is carried out in the United Kingdom;
- (d) 1 point if at least 50% of the work carried out on any of the following is carried out in the United Kingdom—
 - (i) performing and recording the music score created for the film;
 - (ii) voice recording;
 - (iii) audio post production;
 - (iv) picture post production.”.

Amendments to paragraph 4D of Schedule 1

6.—(1) Paragraph 4D of Schedule 1 to the Films Act 1985(a) is amended as follows.

(2) In sub-paragraph (1)—

- (a) in the definition of “qualifying person”, for “a member State” substitute “an EEA state”; and
- (b) omit the definition of “recognised regional or minority language”.

(3) For sub-paragraph (3) substitute—

“(3) For the purposes of paragraphs 4A to 4C—

- (a) a film is set in the United Kingdom or another EEA state if it is set in a country which is now part of the United Kingdom or another EEA state; and
- (b) a film depicts a qualifying story if the subject matter of the film or the underlying material on which the film is based is from the United Kingdom or another EEA state.”

(4) In sub-paragraph (4)—

- (a) in paragraph (a), for “paragraph 4A(5)(a)(i)” substitute “paragraphs 4A(5)(a)(i) and (b)(i) and 4B(5)(a)(i) and (b)(i)”; and
- (b) in paragraph (b), for “paragraph 4A(5) and paragraphs 4B(5) and” substitute “paragraphs 4A(5) and 4B(5) and paragraph”.

Name

Date

We approve

Name

Name

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order updates the statutory test contained in Schedule 1 to the Films Act 1985 (“the Schedule”) that is used to assess whether a film is culturally British. Films that are certified by the Secretary of State as having passed this test are entitled to apply for tax relief on film production

(a) Paragraph 4D was added by S.I. 2006/3430.

costs in accordance with Part 15 of the Corporation Tax Act 2009. Paragraphs 4A to 4C (applying to films, documentaries and animations respectively) of the Schedule set out points-based systems based on a number of criteria, including the setting, subject matter, characters, language, location of work and participants in the production of the film.

Article 2 provides for application and exempts certain films from the amendments made by the Order. Article 2(2)(a) exempts films if the latest version of the Schedule (as provided by the Films (Definition of “British Film”) (No 2) Order 2006) does not apply in relation to them. Article 2(2)(b) provides that the test will not apply if an application for certification is made prior to the entry into force of the Order. Article 2(2)(c) and 2(3) provide that if principal photography or shooting has commenced before the entry into force of the Order, but no application for certification has been made, the film production company may elect to have the amendments made by this Order not apply to that film; accordingly such films are assessed against the applicable rules for that film as if this Order had not been made.

Articles 3 to 5 amend the cultural test in paragraphs 4A to 4C of the Schedule. The amendments—

- (a) increase the points available if certain percentages of film production work (50% and 80%) takes place in the UK,
- (b) increase the points available for language use, and
- (c) provide that points awarded for a film’s British setting, subject matter, characters and language will equally be awarded for setting etc relating to other EEA states.

The effect of the changes is that the number of points available changes from 31 to 35. The pass mark is accordingly changed from 16 to 18 points.

Article 6 amends paragraph 4D of Schedule 1, which contains various definitions and interpretative provisions.

The impact on business, charities and voluntary bodies of this Instrument has been included in the assessment published by HMRC concerning the impacts of wider changes to the operation of film tax relief. That assessment (which remains an accurate summary of the impact) can be accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264454/8._Modernising_film_tax_relief.pdf. No significant impact on the public sector is foreseen, and therefore no separate impact assessment has been prepared.

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