

EXPLANATORY MEMORANDUM TO
THE CULTURAL TEST (TELEVISION PROGRAMMES) REGULATIONS 2013

2013 No. 1831

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations introduce points-based tests for television programmes (which may be a drama, documentary or animation) in connection with qualification for tax relief for television production development. The purpose of the tests is to allow the Secretary of State to assess whether the attributes of a television programme (such as its content, where it was made and the persons involved in its production or development) are sufficiently culturally British or European in order to qualify for the reliefs. These Regulations also set out the information and evidence that applicants must provide in relation to these cultural tests.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 These Regulations will be made, laid and enter into force during the summer recess period. While the Department appreciates that it should avoid laying negative instruments in the summer recess, the ability for producers to claim tax reliefs can be a critical factor in securing other sources of finance and thus aiding cash flow. Two consultations have been held on the Regulations as set out in section 8 below. The Regulations were also published alongside the Finance Bill 2013, and were considered in debates in the House on the Bill¹. Taking such these very specific circumstances into account, the Department therefore considers that it is appropriate for the Regulations to be made during recess.

4. Legislative Context

4.1 The Finance Act 2013 introduced into the Corporation Tax Act 2009 new tax reliefs for high end television programmes and animations (see Part 15A of the 2009 Act). One of the requirements that must be satisfied in order to qualify for the reliefs is that the programme must be certified by the Secretary of State as a “British programme” in accordance with conditions specified by the Secretary of State in regulations, with the approval of the Treasury. These Regulations set out the conditions that must be satisfied in order that the Secretary of State may certify a programme as a British programme.

4.2 In addition, the provisions introduced into the Corporation Tax Act 2009 by the Finance Act 2013 allow the Secretary of State to make regulations setting out the

¹ House of Commons Public Bill Committee on the Finance (No.2) Bill 2013-14, 9th and 10th sittings, 4th June 2013, cols 290-311.

information and the evidence required in connection with an application for certification as a British programme. These Regulations also include regulations made under these provisions.

4.3. As the tax reliefs for television programmes are new reliefs, this is the first time that these regulation-making powers have been used.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 As with the existing corporation tax relief for film production (which are set out in Part 15 of the Corporation Tax Act 2009), the new creative sector reliefs for television programmes required State aid approval from the European Commission. Article 107 of the Treaty on the Functioning of the European Union prohibits Member States from providing aid, such as tax relief, to selected industries or businesses if such aid has the potential to distort competition and affect trade between Member States. There is an exemption, however, for aid to promote culture. The European Commission may approve such aid if such aid does not affect trading conditions and competition in the European Union to an extent that is contrary to the common interest.

7.2 The Department has received approval from the European Commission that the cultural tests for television programmes set out in these Regulations provide verifiable national criteria to identify culturally British productions.

7.3 The cultural tests award points in four sections: in relation to the British or European content of the programme; the cultural contribution of the programme; the extent to which the programme was developed in the United Kingdom; and the extent the programme was made by nationals or residents of the European Economic Area.

7.4. The cultural tests do not stipulate content, location of production, or selection of practitioners, but the tests do ask for a reasonable amount of production activity to take place in the UK in order for a drama, documentary, or animation programme to qualify as 'British'.

8. Consultation Outcomes

8.1 The Department worked with stakeholders – through sector based working groups - to design separate cultural tests for television programmes in line with the European Commission's rules on State aid. The Department subsequently issued consultation papers on the proposed cultural tests on 1 October 2012 and invited responses by 29 October 2012. The Department considers that the consultation period

was sufficient because the Department has good existing links and working relationships with those, such as television producers, who are likely to be most affected by the policy. A total of 41 responses were received. All respondents were broadly supportive of the cultural tests, but adjustments were made post-consultation to the terminology used in the cultural tests and the distribution of points in Section A of the tests (in relation to British or European content). A draft of these regulations was published alongside the draft primary legislation on 11 December 2012, with the consultation period on the draft legislation closing on 6 February 2013. As a result of this consultation, further improvements were made to the terminology used and how points are awarded where there is more than one lead practitioner involved in the making of a programme. The Department also agreed to amendments sought by the European Commission in respect of a minimum level of cultural content to be achieved in Section A and an adjustment to how indeterminate locations and characters are treated in the cultural test for animation.

9. Guidance

9.1 The British Film Institute (BFI) Certification Unit will be responsible for assessing applications for the certification of British programmes on behalf of the Secretary of State. The Department and the BFI have developed guidance on the cultural tests (which is similar to the current guidance for British film certification) which is available at <http://www.bfi.org.uk/film-industry/british-certification-tax-relief/cultural-test-high-end-television> and <http://www.bfi.org.uk/film-industry/british-certification-tax-relief/cultural-test-animation-programmes>. The Department has deposited a copy of the guidance in the Library of the House of Commons.

10. Impact

10.1 Businesses will have to complete a cultural test application for each production in order to qualify for the relief, as well as making the claim for the relief through their tax returns. These regulations are necessary for the administration of the reliefs.

10.2 The impact on business, charities or voluntary bodies arising from this instrument has been included in the Tax Information and Impact Notes prepared for the Finance Act 2013 which was published alongside the budget on 20th March 2013. The Notes are available on the HMRC website at <http://www.hmrc.gov.uk/tiin/2012/tiin2390.htm> (in respect of dramas and documentaries) and <http://www.hmrc.gov.uk/tiin/2012/tiin2356.htm> (in respect of animation). The Notes remain an accurate summary of those impacts.

10.3 The impact on the public sector, chiefly the BFI and the Department, is beneath the financial threshold that would indicate that an Impact Assessment should be prepared. The BFI will receive from the Department an additional one off payment of £250k in 2013/14 to meet the cost of expanding the film certification function to administer these new reliefs. The on-going cost of expanded certification functions for both BFI and DCMS will be assessed during the first year of operation.

10.4 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business. The views of small businesses were taken into account before the consultation and during the consultation period. The cultural test is a mandatory requirement for any programme wishing to qualify for the tax relief.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to seek to minimise the particulars required to apply for tax relief. The Department is satisfied that the impact on small businesses is not disproportionate to that on other businesses.

11.3 The basis for the decision on what action to take to assist small business is that the cultural test will benefit the UK's creative content sector by encouraging the use of British content and practitioners.

12. Monitoring & review

12.1 The UK is required to submit an annual report to the European Commission on the implementation of the cultural test measure to ensure it is consistent with the original State aid notification.

12.2 This cultural measure will be monitored and assessed alongside other measures in the Government's package of corporate tax reforms.

13. Contact

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