

**EXPLANATORY MEMORANDUM TO
THE CULTURAL TEST (TELEVISION PROGRAMMES) (AMENDMENT)
REGULATIONS 2015**

2015 No. 1449

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 amend the Cultural Test (Television Programmes) Regulations 2013 by updating the cultural test for drama and documentary television programmes, as well as introducing a new points-based test for children’s television programmes¹. The purpose of the tests is to allow the Secretary of State to assess whether the attributes of a television programme are sufficiently cultural in order to qualify for Corporation Tax relief. Consequential amendments are also made to other conditions of the tests and the information that applicants must provide in relation to these cultural tests.

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

3.1 None.

4. Legislative Context

4.1 The Finance Act 2013 introduced into the Corporation Tax Act 2009 new tax reliefs for drama, documentary and animation television programmes (see Part 15A of the 2009 Act). It was further amended by the Finance Act 2015 to introduce a new tax relief for children’s programmes and to reduce the minimum UK expenditure requirement for high-end television programmes from 25% to 10% of core expenditure on the programme, with effect from 1 April 2015.

4.2 One of the requirements that must be satisfied in order to qualify for tax relief 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. These conditions are known as cultural tests. The cultural test for dramas, animation and documentary programmes are set out in the Cultural Test (Television Programmes) Regulations 2013 (S.I. 2013/1831). Those Regulations also set

¹ A children’s television programme is defined in section 1216AC(2A) of the Corporation Tax Act 2009 (as inserted by section 30(4) of the Finance Act 2015): “a programme is a children’s programme if, when television production activities begin, it is reasonable to expect that the persons who will make up the programme’s primary audience will be under the age of 15.”

out the information and the evidence that must be submitted in connection with an application for certification as a British programme².

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The cultural test for film (on which all subsequent creative sector cultural tests have been modelled) was introduced in 2007 and has proven highly successful as a means of encouraging film production in the UK. In 2013 the Government introduced tax reliefs for drama, documentary and animation television programmes, and in 2014 for video games. These reliefs are also accessible on the basis of cultural tests modelled on the cultural test for film. These Regulations modernise the cultural test for drama and documentary programmes to bring it in line with the cultural test for film, and introduce a new cultural test for children's television programmes. These measures were announced by the Chancellor of the Exchequer at Autumn Statement 2014 and confirmed at Budget 2015.

7.2 The relief for children's television programmes was notified to the European Commission in March 2015 under the General Block Exemption Regulation. The Commission has also been notified of the change in the rate of relief for high-end television programmes.

7.3 Points under the tests are awarded on the basis of the setting, origin of characters, story, language and cultural aspects of the programme; where certain work on the making of the programme is carried out, and the residence or nationality of the personnel involved in the making of the programme.

7.4 For dramas and documentaries, a summary of the changes made by these Regulations is as follows:

- More points will be awarded when a high percentage of a programme's dialogue is in English or a language recognised for official purposes by another EEA state. Programmes where 75% of dialogue is in such language(s) will receive 6 points instead of 4, and where 66% of a programme uses such language(s) it will receive 4 points instead of 3.

² See Regulation 7 and Schedule 2 to S.I. 2013/1831.

- More points (4 rather than 2) will be awarded when 80% or more of a programme's principal photography, visual or special effects work is carried out in the United Kingdom (the previous maximum points available were 2 when 50% or more of such work was carried out in the United Kingdom).
- A maximum of 35 points therefore becomes available, resulting in a test with a pass mark of 18 (replacing a 31 point test with a pass mark of 16).

7.5 For children's television programmes, the new 35 point test is also modelled on the existing cultural tests³. In particular it mirrors the updated test for dramas and documentaries in these Regulations and awards points on the basis of the setting, origin of characters, story, language and cultural aspects of the programme; where certain work on the making of the programme is carried out and the residence or nationality of the personnel involved in the making of the programme.

8. Consultation Outcomes

8.1 The Department, along with HM Treasury and HM Revenue & Customs, worked with stakeholders – through an informal written consultation process and sector-based working groups – to both modify the cultural test for drama and documentary programmes and design a new tax relief and cultural test for children's television programmes in line with the European Commission's rules on State aid.

8.2 For dramas and documentary programmes, industry welcomed the proposed changes to the cultural test to bring it into line with the recently modernised cultural test for film⁴. Combined with the lowering of the minimum expenditure threshold, it was noted that this would be likely to attract more new work to the UK, particularly on productions which for creative reasons may still wish to carry out principal photography in other jurisdictions.

8.3 British live-action children's television has an established record of success, both internationally and commercially, but the last decade has been characterised by rapid decline and increasingly challenging conditions for UK producers. Investment in original British children's TV amongst the commercial public service broadcasters (PSBs) fell by 97% over the last decade, from £65m in 2002 to £2m in 2011.⁵ In 2011, content originating in the UK represented just 20% of the total hours of children's programming.

8.4 Industry made the case that the incentive will help to create a more competitive domestic production market, with a projected net financial benefit to the Exchequer estimated to be worth

³ Film (see the Films Act 1985), video games (see S.I. 2014/1958), and drama, animation and documentary television programmes (S.I. 2013/1831).

⁴ S.I. 2015/86, which amended the cultural test in Schedule 1 to the Films Act 1985 (c. 21).

⁵ Ofcom, PSB Annual Report 2013: Annex F - Children's Report, August 2013, quoted in the Pact report to Government: <https://www.pact.co.uk/support/document-library/documents/the-economic-case-for-a-childrens-tv-tax-credit/>.

£2.9m per year.⁶ They also argued that it could drive further growth in exports by creating more home-grown content for both domestic and global audiences. The industry also made the case that there is the opportunity for growth by attracting international production spend to the UK.

8.5 Overall, stakeholders were very positive about both proposals, expressing a preference for a 35 point cultural test for children's programmes, and noting that the further alignment of all the creative sector tax reliefs will make them easier to understand, explain and operate.

9. Guidance

9.1 The British Film Institute (BFI) Certification Unit are responsible for assessing applications for the certification of British programmes and for making recommendations to the Secretary of State who takes final decisions on certification. The Department and the BFI have developed guidance on the revised cultural test for dramas and documentaries, and for children's television programmes, which will be made available on the BFI's website once this measure comes into force.

10. Impact

10.1 As is currently the case, businesses will have to complete a cultural test application for each production (or, when programmes form part of a series, for each series) 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 2015 which was published alongside the Budget on 18th March 2015. The Notes are available on the HMRC website at

<https://www.gov.uk/government/publications/corporation-tax-high-end-television-tax-relief> (in respect of dramas and documentaries) and

<https://www.gov.uk/government/publications/childrens-television-tax-relief> (in respect of children's television). 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. An Impact Assessment has therefore not been prepared for this Instrument.

11. Regulating small business

11.1 The Regulations apply to small business. The views of small businesses were taken into account during the informal consultation period.

⁶ *ibid*, Pact report. Based on attracting production of four incremental children's TV series to the UK each year.

11.2 To minimise the impact of the requirements on firms employing up to twenty people, the approach taken is to seek to minimise the particulars required to apply for tax relief. The Department is satisfied that this instrument does not impose any additional regulatory burdens on small businesses.

11.3 The Department is of the view that this measure will benefit small businesses via encouraging growth in the UK's television production industry by encouraging the use of British content and practitioners.

12. Monitoring & review

12.1 The United Kingdom 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 These cultural measures will be monitored and assessed alongside other measures in the Government's package of Corporation Tax reforms.

13. Contact

13.1 James Butler at the Department for Culture, Media and Sport (Tel: 020 7211 6307 or e-mail: james.butler@culture.gov.uk) can answer any queries regarding the Instrument.