1960 No. 727

The Cinematograph Films (Distribution of Levy) Regulations, 1960

Laid before Parliament in draft

Made - - - -	12*th April*, 1960
Coming into Operation	17*th April*, 1960

Whereas a draft of these Regulations has been laid before Parliament and approved by Resolution of each House pursuant to subsection (4) of section 3 of the Cinematograph Films Act, 1957(a) (hereinafter referred to as "the Act"):

Now, therefore, the Board of Trade, in pursuance of the powers conferred upon them by sections 3 and 8 of, and paragraph 7 (1) of the Schedule to, the Act, and after consultation with the Cinematograph Films Council, hereby make the following Regulations:—

Agency to make payments

1. The British Film Fund Agency (hereinafter called "the Agency") shall, in respect of the period of 52 weeks commencing on the 18th day of October, 1959, and in respect of each of the following seven consecutive periods of fifty-two weeks (any such period being hereinafter called "a distribution period"), make payments in accordance with the following provisions of these Regulations, out of moneys available for distribution, to the makers of eligible films in respect of those films.

Moneys available for distribution

2. Moneys available for distribution in respect of any distribution period shall be calculated in accordance with the provisions of the Schedule hereto.

Amount of payments

3.—(1) Subject to the provisions of Regulation 7 of these Regulations, the maker of an eligible film shall be entitled in respect thereof, out of moneys available for distribution in respect of a distribution period, to an amount equal to that proportion of such moneys which the total earnings of that film during that distribution period, computed as hereinafter provided, bear to the total of the earnings of all eligible films during that distribution period computed in like manner.

(2) Where, by virtue of the provisions of the said Regulation 7, the maker of an eligible film is not entitled to a payment in respect thereof, the earnings of that film in the distribution period in question shall be disregarded in making any computation under this Regulation in relation to that distribution period.

Time for payment

4.—(1) The amount to which a maker of an eligible film is entitled by virtue of Regulation 3 of these Regulations in respect of a distribution period,

(a) 5 & 6 Eliz. 2. c. 21.

less the total of any payments made on account thereof by virtue of the next succeeding Regulation, shall be paid to him by the Agency within three months after the earnings during that distribution period of all eligible films, in respect of which the makers thereof are entitled to payments by virtue of the said Regulation 3, have been finally ascertained.

(2) Where payment has been made in relation to a distribution period in pursuance of paragraph (1) of this Regulation in respect of a film to the maker thereof and that film is subsequently found to be a television film, that payment (together with any payments made under the next succeeding Regulation) may be recovered by the Agency from the maker as a simple contract debt in any court of competent jurisdiction.

Provisional payments

5.—(1) Before an amount to which the maker of an eligible film is entitled in respect thereof becomes payable to him by virtue of Regulation 4 of these Regulations, the Agency may from time to time make payments to him on account thereof.

(2) Where the total of the payments made under paragraph (1) hereof to the maker of an eligible film in respect thereof on account of any amount exceeds the amount (if any) to which he is subsequently found to be entitled in respect of that film, the excess may be recovered from him by the Agency as a simple contract debt in any court of competent jurisdiction.

Computation of earnings of films

6.—(1) Subject to the following provisions of this Regulation, the earnings during any distribution period of an eligible film shall be—

(*a*) in the case of a high cost film, the total amount due during that distribution period from exhibitors to renters of that film under contracts for the hire of the film for exhibition to the public in programmes at theatres;

(*b*) in the case of a low cost film, twice such total amount;

(*c*) in the case of a short film, two and a half times such total amount:

Provided that, in the case of a low cost film, if at any time during a distribution period the aggregate amount due from exhibitors to renters for the hire of the film during that and any previous distribution period equals the amount of the labour costs of the film or £15,000, whichever is the lower, the earnings shall thereafter be the total amount due during the remainder of that and any subsequent distribution period from exhibitors to renters of the film under such contracts.

(2) Where in respect of the exhibition to the public of an eligible film as aforesaid for any period there is no contract for the hire of the film, for the purpose of calculating the earnings of the film in accordance with paragraph (1) of this Regulation, the amount to be included in the total amount mentioned in the said paragraph (1) in respect of that exhibition shall be the amount which the Agency determine would, in their opinion, have been payable for that film under a contract of hire for the exhibition thereof to the public at a comparable theatre for the same period:

Provided that no determination shall be made hereunder in relation to the exhibition of a film if, had there been a contract for the hire of that film, the amount due to the renter under that contract would be disregarded in computing the earnings of the film by virtue of paragraph (3) of this Regulation.

For the purposes of these Regulations, any earnings calculated under this paragraph in relation to the exhibition of a film at a theatre shall be taken to be due on the last day of the exhibition of that film at that theatre.

(3) (*a*) In the case of an eligible film which is registered as an exhibitors' quota film the amount due to a renter under a contract for the hire of that film for exhibition to the public shall be disregarded in computing the earnings of that film if, at any time during the exhibition of that film in pursuance of that contract, the film is, by virtue of subsection (1) of section 3 of the Cinematograph Films Act, 1948(**a**), to be disregarded for the purposes of subsections (2) and (3) of section 1 of that Act.

(*b*) In the case of any other eligible film the amount due to a renter under a contract for the hire of a film shall be disregarded in computing the earnings of that film if, at any time during the exhibition of that film in pursuance of that contract, the period of four years commencing with the beginning of the quota period next following that during which the first exhibition to the public of that film took place expires, unless, upon an application made by the renter before the expiry of the period covered by the contract, the Board of Trade, after consulting the Cinematograph Films Council and considering its advice in the matter, direct that such amount shall be taken into account in computing those earnings.

(4) If a contract for the hire of an eligible film for exhibition to the public contains a provision that the renter is to make a contribution in respect of the expenses incurred by the exhibitor in publicising the film, that provision shall be disregarded in determining, for the purpose of computing the earnings of the film, the amount due to the renter under that contract.

(5) Where the terms of a contract, entered into after the 20th day of October, 1957, for the hire of an eligible film for exhibition to the public are such that the rentals payable thereunder in respect of that film cannot be ascertained therefrom, that contract shall be disregarded in computing the earnings of that film.

(6) Where the terms of a contract, entered into before the 20th day of October, 1957, for the hire of an eligible film for exhibition to the public are such that the rentals payable thereunder in respect of that film cannot be ascertained therefrom, the Agency shall determine the part of the rentals payable under that contract which should in their opinion be allocated to the eligible film, and the part so determined shall, for the purpose of these Regulations, be the rental payable under that contract for that film :

Provided that no determination shall be made hereunder if the amount due under the contract is to be disregarded by virtue of paragraph (3) of this Regulation.

For the purposes of these Regulations, a rental determined under this paragraph in relation to the exhibition to the public of a film under a contract shall be taken to be due on the last day of the exhibition of that film under that contract.

(7) Where a programme includes two or more films one or more of which are eligible films and at least two of the films in the programme are rented from the same renter (whether under the same contract or not), the Agency may, if in their opinion the rental payable for any eligible film in the programme is an undue proportion of the aggregate of (i) that rental, and (ii) the total of the rentals for all the other films in that programme rented

(**a**) 11 & 12 Geo. 6. c. 23.

from the renter who is renting the eligible film, determine the amount which should in their opinion be payable for each film in the programme rented from that renter, and the amount so determined shall, for the purposes of these Regulations, be deemed to be the rental payable under the relevant contract for that film :

Provided that the total of the rentals determined hereunder by the Agency for films in a programme shall not differ from the total of the rentals actually paid for those films under the relevant contract.

For the purposes of this paragraph, where a renter of a film is a company which is a member of a group of companies of which the renter of another film in the same programme is also a member, those films shall be deemed to be rented from the same renter.

(8) If the renter of an eligible film under a contract of hire for the exhibition of that film to the public is a member of a group of companies of which the exhibitor of that film under the contract is also a member, the Agency may, if in their opinion the rental payable under the contract for that film is greater than it would have been if the renter and the exhibitor had not been so related, determine the amount which should in their opinion be payable under the contract for that film, and the amount so determined shall, for the purposes of these Regulations, be deemed to be the rental payable under the contract for that film.

(9) For the purposes of this Regulation, and subject to paragraph (6) hereof,—

(*a*) where a contract of hire between a renter and an exhibitor for the exhibition of an eligible film at only one theatre provides for the amount due to the renter to be computed by reference to the receipts of the exhibitor for the exhibition of the film and also provides—

(i) for the exhibition of the film for a period of not more than one week, that amount shall be taken to be due to the renter at the end of that period ;

(ii) for the exhibition of the film for a period of more than one week, each week shall be treated separately and, where the period is not an exact number of weeks, the remainder of the period shall also be treated separately, and that part of the amount which is computed by reference to the receipts for the exhibition of the film during a week or the remainder of the period shall be taken to be due to the renter at the end of that week or the remainder of the period as the case may be ;

(*b*) where a contract of hire between a renter and an exhibitor for the exhibition of a film at more than one theatre provides for the amount due to the renter to be computed as aforesaid, the times at which that amount shall be taken to be due to the renter shall be determined in accordance with the provisions of head (*a*) of this paragraph, separately in respect of each theatre as if that theatre was the only theatre at which the film was to be exhibited by virtue of that contract ;

(*c*) where a contract of hire between a renter and exhibitor for the exhibition of a film provides for an amount certain to be paid for the hire of the film, that amount shall be taken to be due to the renter on the date provided by the contract for the payment thereof.

(10) In this Regulation " group of companies " means a company and all other companies which are its subsidiaries within the meaning of section 154 of the Companies Act, 1948(a).

(a) 11 & 12 Geo. 6. c. 38.

Claims and information

7.—(1) The maker of an eligible film shall not be entitled, by virtue of Regulation 3 of these Regulations, to any payment in respect thereof unless he has complied with the following provisions of this Regulation in respect of that payment.

(2) The maker of an eligible film shall make a claim in writing for a payment in respect of that film in such form as the Agency may require.

(3) Any such claim shall be sent to the Agency within such time, and shall be verified in such manner, as the Agency may require; and the person making the claim shall furnish such further information in relation thereto as the Agency may require.

Notice of rejection of claims

8.—(1) If, at any time before a payment becomes due under Regulation 4 of these Regulations in relation to a claim made in respect of a film, the Agency are of the opinion that the maker of the film is not entitled to that payment on the ground that the film is not an eligible film or that the maker has not complied with the provisions of Regulation 7, they shall give to the maker notice in writing of the rejection of the claim and shall state therein the ground on which it has been rejected.

(2) A notice of rejection may, at any time before the expiry of the period of three months from the giving of the notice, be withdrawn by the Agency.

(3) A notice of the rejection of a claim (which has not been withdrawn as aforesaid) shall be final and conclusive as to the ground of the rejection unless—

(*a*) before the expiry of the period of four months from the giving of the notice an action or other legal proceedings have been commenced with a view to disputing the rejection of the claim to which the notice relates, and the commencement thereof has been notified in writing to the Agency by the maker of the film before the expiry of the said period; or

(*b*) where the ground of the rejection is that the film is not an eligible film, any other action or other legal proceedings (whether or not the Agency are a party thereto), which might affect the question as to whether the film is or is not an eligible film, have been commenced before the expiry of the said period of four months and were not concluded at the date on which the notice was given, and the commencement thereof has been notified in writing to the Agency by the maker of the film before the expiry of the said period.

(4) If any action or other legal proceedings mentioned in head (*b*) of paragraph (3) have been commenced and were not concluded as aforesaid, the Agency shall, at the conclusion thereof or of the last of them, give to the maker of the film in question a notice in writing stating whether they accept or reject the claim in respect of that film; and, where the claim is rejected, the provisions of paragraphs (2), (3) (with the omission of head (*b*)) and (5) of this Regulation shall apply to the notice of rejection as they apply to a notice of rejection given under paragraph (1) hereof.

(5) Where any action or other legal proceedings mentioned in paragraph (3) are abandoned, that paragraph shall have effect as if they had never been commenced.

Notice of determination of earnings

9.—(1) The Agency shall compute, in accordance with the provisions of these Regulations, the total earnings during a distribution period of each eligible film in respect of which the maker is entitled to a payment by virtue of Regulation 3, and shall give to the maker thereof a notice in writing of their determination of those earnings.

(2) A notice of the determination of the earnings of an eligible film may, at any time before the expiry of the period of three months from the giving of the notice, be amended by a further notice in writing given by the Agency to the maker of the eligible film.

(3) A notice of the determination of the earnings of an eligible film or, where that notice has been amended, the notice as amended, shall be final and conclusive as to the earnings of that film for the purposes of these Regulations unless—

(*a*) before the expiry of the period of four months from the giving of the notice, or, where the notice has been amended, from the giving of the notice last amending it, an action or other legal proceedings have been commenced with a view to disputing the determination to which the notice relates, and the commencement thereof has been notified in writing to the Agency by the maker of the film before the expiry of the said period ; or

(*b*) any other action or other legal proceedings (whether or not the Agency are a party thereto), which might affect the earnings of the film, have been commenced before the expiry of the said period of four months and were not concluded at the date on which the notice was given, and the commencement thereof has been notified in writing to the Agency by the maker of the film before the expiry of the said period.

(4) If any action or other legal proceedings have been commenced for the purpose mentioned in head (*a*) of paragraph (3) hereof, at the conclusion thereof the Agency shall, if, and to the extent only that, it is necessary to do so as a result of that action or other proceedings, amend the notice in respect of which the action or other proceedings were commenced by a further notice in writing given to the maker of the eligible film in question ; and that notice or, if it has been amended by such further notice, that notice as so amended, shall be final and conclusive as to the earnings of that film for the purposes of these Regulations.

(5) If any action or other legal proceedings mentioned in head (*b*) of paragraph (3) hereof have been commenced and were not concluded as aforesaid, the Agency shall, at the conclusion thereof or of the last of them, give to the maker of the eligible film in question a further notice in writing of their determination of the earnings of that film ; and the provisions of paragraphs (2), (3) (with the omission of head (*b*)), (4) and (6) of this Regulation shall apply to the further notice of determination as they apply to a notice of determination given under paragraph (1) hereof.

(6) Where any action or other legal proceedings mentioned in paragraph (3) are abandoned, that paragraph shall have effect as if they had never been commenced.

Contingencies

10.—(1) The Agency, with the consent of the Board of Trade, may in respect of each distribution period set aside, out of moneys received by the Commissioners of Customs and Excise under the Cinematograph Films

(Collection of Levy) Regulations, 1960(a), in respect of payments for admission to entertainments taking place during that distribution period and paid to them by the Commissioners in pursuance of subsection (4) of section 2 of the Act of 1957, a sum not exceeding £20,000.

(2) Any such sum shall be paid into a separate account opened by the Agency and may only be paid thereout—

(*a*) with the consent of the Board of Trade, to meet contingencies;

(*b*) to be dealt with as part of the moneys available for distribution in respect of the final distribution period as mentioned in paragraph 1 of the Schedule hereto.

(3) Where a payment made under these Regulations in respect of a distribution period has been recovered by the Agency (whether under any provision of these Regulations or otherwise) after any payment has been made in respect of that distribution period in pursuance of Regulation 4 of these Regulations, the amount of the recovery shall be paid into the account opened in pursuance of the last preceding paragraph and shall only be paid thereout for the purposes, and subject to the consent, mentioned in that paragraph; and the recovery of any such payment shall not increase the amount to which any maker is or was entitled in relation to that distribution period by virtue of these Regulations in respect of any film.

Interest

11. Any interest received by the Agency on any moneys shall be paid into a separate account opened by the Agency and shall only be paid thereout to be dealt with as part of moneys available for distribution as mentioned in paragraph 1 of the Schedule hereto.

Expenses of winding up of Agency

12. The Agency shall set aside, out of moneys received by the Commissioners of Customs and Excise under the Cinematograph Films (Collection of Levy) Regulations, 1960, in respect of payments for admission to entertainments taking place during the final distribution period and paid to them by the Commissioners in pursuance of subsection (4) of section 2 of the Act of 1957, such sum as appears to the Board of Trade sufficient to defray the expenses of the winding up of the Agency, and of which the Board of Trade have given to the Agency notice in writing.

Revocation

13. The Cinematograph Films (Distribution of Levy) Regulations, 1957(b), the Cinematograph Films (Distribution of Levy) (Amendment) Regulations, 1958(c), and the Cinematograph Films (Distribution of Levy) (Amendment No. 2) Regulations, 1959(d), are hereby revoked.

Interpretation

14.—(1) In these Regulations—

"the Act of 1957" means the Cinematograph Films Act, 1957;

"Agency" and "distribution period" have the meanings respectively assigned thereto by Regulation 1 of these Regulations;

"eligible film" means a film which is registered as a British film and as an exhibitors' quota film under Part III of the Cinematograph Films Act, 1938(e), and in the case of a film so registered after the 31st

(a) S.I. 1960/726 (Pt. I, p. 555, of this vol.).
(b) S.I. 1957/1342 (1957 I, p. 347).
(c) S.I. 1958/270 (1958 I, p. 293).
(d) S.I. 1959/725 (1959 I, p. 658).
(e) 1 & 2 Geo. 6. c. 17.

day of December, 1959, the maker of which was throughout the time the film was being made, a person ordinarily resident in, or a company registered in, and the central management and control of whose business was exercised in, the United Kingdom, or any other British film made by such a maker which is first exhibited to the public in programmes at theatres after the coming into operation of these Regulations the labour costs of which are not less than fifty pounds per minute of playing time, other than—

(*a*) a film made by or on behalf of a department of Her Majesty's Government in the United Kingdom or by or on behalf of a Government of any part of Her Majesty's Dominions or of any country which is deemed to be part of Her Majesty's Dominions for the purposes of the Cinematograph Films Act, 1938;

(*b*) a television film;

(*c*) a film of a width not exceeding sixteen millimetres;

(*d*) a film to which, by virtue of section 35 of the Cinematograph Films Act, 1938, that Act and the Cinematograph Films Act, 1948, do not apply;

"group of companies" has the meaning assigned thereto by paragraph (10) of Regulation 6 of these Regulations;

"high cost film" means a long film which is not a low cost film;

"low cost film" means a long film the labour costs of which do not exceed £20,000;

"television film" means a film—

(*a*) in respect of which an agreement or arrangement is in existence at the date of registration of the film under Part III of the Cinematograph Films Act, 1938, for the exhibition of the film to the public on television, in the case of a long film, inside the United Kingdom and, in the case of a short film, inside or outside the United Kingdom; or

(*b*) which is exhibited to the public on television—

(i) in the case of a long film, inside the United Kingdom, and

(ii) in the case of a short film, inside or outside the United Kingdom,

before the expiry of twelve months from the said date of registration of the film or, where the film forms part of a serial film or series of films, from the said date of registration of the last film forming part of the serial film or series of films.

(2) For the purposes of the definition of television film—

(*a*) the exhibition to the public on television of an excerpt or excerpts from a film shall be deemed to be an exhibition of that film to the public on television; and

(*b*) the exhibition to the public on television of a film or an excerpt from a film of a width other than 35 millimetres, being a copy of an eligible film or of an excerpt from an eligible film, shall be deemed to be an exhibition to the public on television of that eligible film or excerpt:

Provided that no account shall be taken of—

(i) any excerpts so exhibited no one of which lasts more than five minutes, so however that if two or more excerpts are so exhibited without intermission they shall be deemed to be one excerpt,

(ii) any agreement or arrangement for the exhibition of a film to the public on television entered into before the 20th day of October, 1957, or

(iii) any exhibition of a film or an excerpt from a film which took place before the 20th day of October, 1957.

(3) Unless the context otherwise requires, these Regulations apply to films of a width exceeding sixteen millimetres and expressions other than " serial film or series of films " have the same meanings as in the Cinematograph Films Act, 1938:

Provided that, where the earnings or a proportion of the earnings in Great Britain of an eligible film have been assigned by the maker thereof, the assignee shall, as from the date on which notice in writing of the assignment has been given to the Agency and to the extent to which, and, if the assignment is limited as to time, for the period for which, the earnings have been assigned to him, be deemed for all purposes of these Regulations to be the maker of the film to the exclusion of the actual maker thereof; and accordingly the assignee shall, subject to the provisions of these Regulations, be entitled to the payments, or as the case may be, to a proportion of the payments corresponding with the proportion of the earnings assigned to him, to be made hereunder after the said date and, if the assignment is limited as aforesaid, during the period for which the assignment was made, in like manner as the actual maker would have been entitled but for the assignment.

(4) Any reference in these Regulations to the Cinematograph Films Act, 1938, shall be construed as a reference to that Act as set out in the Second Schedule to the Cinematograph Films Act, 1948.

(5) For the purposes of these Regulations each part of a serial film or series of films shall be deemed to be a separate film.

(6) The Interpretation Act, 1889(a), shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament, and as if these Regulations and the Regulations hereby revoked were Acts of Parliament.

Citation and commencement

15. These Regulations may be cited as the Cinematograph Films (Distribution of Levy) Regulations, 1960, and shall come into operation on the 17th day of April, 1960.

Dated this 12th day of April, 1960.

John Rodgers,
Parliamentary Secretary to the
Board of Trade.

SCHEDULE

Moneys available for Distribution

1. Subject to the provisions of paragraph 3 of this Schedule, moneys available for distribution by the Agency in respect of any distribution period are the aggregate of—

(*a*) moneys received by the Commissioners of Customs and Excise under the Cinematograph Films (Collection of Levy) Regulations, 1960, in respect of payments for admission to entertainments taking place during that distribution period and paid by the Commissioners to the Agency in pursuance of subsection (4) of section 2 of the Act of 1957;

(a) 52 & 53 Vict. c. 63.

(*b*) the amount standing to the credit of the account referred to in Regulation 11—

(i) in the case of a distribution period other than the final one, at the end of that distribution period;

(ii) in the case of the final distribution period, at the time when payment comes to be made in respect of that distribution period in pursuance of Regulation 4; and

(*c*) in the case of the final distribution period, the amount standing to the credit of the account mentioned in paragraph (2) of Regulation 10 at the time when payment comes to be made in respect of that distribution period in pursuance of Regulation 4,

less the aggregate of the amounts mentioned in paragraph 2 of this Schedule.

2. The amounts to be deducted in accordance with paragraph 1 of this Schedule in respect of a distribution period are—

(*a*) any amount which has been or is to be paid by the Agency to the Children's Film Foundation Limited out of the moneys mentioned in head (*a*) of paragraph 1;

(*b*) any sum set aside by the Agency out of such moneys in accordance with the provisions of paragraph (1) of Regulation 10;

(*c*) the amount of the expenses incurred by the Agency in the exercise of their functions—

(i) in the case of the first distribution period, in and before that distribution period;

(ii) in the case of any distribution period other than the first and final distribution periods, in that distribution period;

(iii) in the case of the final distribution period, in that distribution period and thereafter until the completion of payments in respect of that distribution period, together with such sum as the Agency are, by virtue of Regulation 12, required to set aside to defray the expenses of the winding up of the Agency.

3. Where any moneys received by the Commissioners of Customs and Excise under the Cinematograph Films (Collection of Levy) Regulations, 1960, in respect of payments for admission to entertainments taking place during a distribution period are not paid to the Agency before the 31st day of January next following the end of that distribution period, those moneys—

(*a*) if they are paid to the Agency before the 8th day of October, 1967, shall not be treated as moneys available for distribution in respect of that distribution period, but shall be added to, and treated as, moneys available for distribution in respect of the distribution period in which they are paid to the Agency;

(*b*) if they are paid to the Agency on or after the said 8th day of October, shall be added to, and treated as, moneys available for distribution in respect of the final distribution period.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations consolidate the Cinematograph Films (Distribution of Levy) Regulations, 1957, the Cinematograph Films (Distribution of Levy) (Amendment) Regulations, 1958, and the Cinematograph Films (Distribution of Levy) (Amendment No. 2) Regulations, 1959.

They also amend those Regulations by providing that in future a share of the proceeds of the levy shall be paid to the makers of certain British films of widths exceeding 16 mm. Hitherto only the makers of British standard 35 mm. films have been entitled to a share in the levy.