EXPLANATORY MEMORANDUM TO

THE CULTURAL TEST (TELEVISION PROGRAMMES) (AMENDMENT) REGULATIONS 2017

2017 No. 1138

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Digital, Culture, Media and Sport ("the Department") 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 in order to enable television programmes made in accordance with the Television Co-production Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China ("the Treaty") to access national benefits in the UK, such as tax relief, which stem from co-production treaties. The purpose of such treaties is to provide an official framework under which television producers in the UK and the co-production country can share financial, technical and creative resources to enable them to make their television programmes and qualify for national support measures in both countries.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters of special interest to the House of Commons

3.2 As these Regulations are subject to the negative procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The list of international agreements under which co-produced television programmes can qualify as British programmes is set out in Schedule 1 to the Cultural Test (Television Programmes) Regulations 2015 (S.I. 2015/1941). By adding the new Treaty to that list, this instrument ensures that co-produced television programmes made in accordance with this treaty may access national benefits afforded to British programmes in the UK. These include television tax relief on qualifying expenditure in the UK in accordance with Part 15A of the Corporation Tax Act 2009 (as amended).

5. Extent and Territorial Application

5.1 These Regulations apply to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The policy aim of international audio-visual co-production agreements is to increase inward investment in the UK's domestic audio-visual industries and encourage cultural exchange by enabling film and television producers from both countries to use their respective strengths and facilities to create films and television programmes that are culturally relevant to both countries.

7.2 The Treaty was signed in 2016 and complements the film co-production treaty that both countries signed in 2014. Films made in accordance with that Treaty are now capable of being certified as British, thus securing national benefits in the UK including film tax relief, following an Order in Council made in November 2015[1].

7.3 The new Treaty must be added to the list of international agreements in Schedule 1 to the Cultural Test (Television Programmes) Regulations 2015 to enable qualifying co-produced television programmes made under the Treaty to be certified as British television programmes in accordance with those Regulations. The Treaty will benefit the audio-visual industries in both participating countries, developing infrastructure, audio-visual culture, production facilities, filming locations and the skills of the national workforces. Development of the audio-visual industries is mutually beneficial to both participating countries, particularly in respect of the growth and competitiveness of these industries and to the enhancement of their creative cultures.

8. Consultation outcome

8.1 All audio-visual co-production treaties since 2005 have been introduced on the basis of the outcome of an 18-month comprehensive review the Department conducted into co-production policy. As a result of this review, then Secretary of State Tessa Jowell announced the UK's intention to develop a new package of bilateral co-production agreements, which deliver maximum economic and/or cultural benefits to the UK. This informed the 'model treaty' text on which the Treaty being added by these Regulations is based.

8.2 Whilst no formal consultation was carried out in respect of this Treaty, the television industry has actively sought the agreement of a UK-China television co-production treaty of this kind and, having advised the Government during negotiations, will welcome implementation.

9. Guidance

9.1 No separate guidance will be prepared in relation to these Regulations. However, the operation of the audio-visual tax reliefs and the international co-production agreements are administered on behalf of the Department the British Film Institute

[1] The Films Co-Production Agreements (Amendment) Order 2015 (S.I. 2015/1886).

(BFI). Guidance on applying for qualification under international co-production agreements is available on the BFI's website[2].

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited as the use of the international audio-visual co-production agreements is optional.

10.2 The impact on the public sector is in terms of the cost to the Exchequer in television programme tax relief granted to qualifying co-productions made in accordance with the international agreements which are the subject of these Regulations.

10.3 An Impact Assessment has not been prepared for this instrument because of its low financial and regulatory impact, but HMRC and HMT have approved the following estimates.

10.4 The agreement of the Treaty is likely to bring further investment from the high-end television production sector and will allow UK television producers to apply for high-end television tax relief, for which the threshold is £1 million production expenditure per hour. The expectation is for at least two high-end television projects to use the treaty each year - for example a ten episode series and one off drama, with a combined expenditure of £11 million. In doing so, at least £5 million of the expenditure would be expected to be incurred in the UK, with the ability to achieve up to £1 million in high-end television tax relief.

11. Regulating small business

11.1 These Regulations apply to activities that are undertaken by small businesses.

11.2 No specific action is proposed to mitigate regulatory burdens on small businesses.

11.3 The basis for the final decision on what action to take to assist small business was made on the basis that use of the co-production treaties is optional and grants access to new benefits rather than imposing any new regulatory burdens on companies.

12. Monitoring & review

12.1 The Department believes that a review provision is unnecessary on the basis that monitoring of these measures will be carried out by the BFI's Research and Statistics Unit on a quarterly basis and via HMRC's annual monitoring reports.

13. Contact

13.1 James Butler at the Department for Digital, Culture, Media and Sport. Telephone: 0207 211 6307 or email: james.butler@culture.gov.uk can answer any queries regarding these Regulations.

[2] : http://www.bfi.org.uk/film-industry/british-certification-tax-relief/co-production#bi-lateral-co-production-treaties