**EXPLANATORY MEMORANDUM TO**

**THE FILMS (CERTIFICATION) (AMENDMENT) REGULATIONS 2007**

**2007 No. 3478**

**1.** This Explanatory Memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Description

2.1 These Regulations amend the Films (Certification) Regulations 2006 ("the 2006 Regulations") which prescribe the particulars and evidence necessary for satisfying the Secretary of State that a film is a British film for the purposes of Schedule 1 to the Films Act 1985 ("1985 Act").

2.2 The 2006 Regulations have been amended to only require a report from an independent accountant where an application for final certification of a film as a British film in order to pass the cultural test seeks to rely on points available in relation to principal photography, other areas of work carried out in the making of the film and personnel involved in the making of the film.

2.3 Where such a report is required the 2006 Regulations have also been amended to reduce the content of that report so that it only verifies the particulars mentioned in paragraphs 18 to 20 of the Schedule to the 2006 Regulations (information provided in order to assess whether any points mentioned in paragraph 2.2 should be awarded); and to no longer state, in the opinion of the person preparing the report, whether any points available in relation to principal photography or other areas of work carried out in the making of the film should be awarded.

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

3.1 The 2006 Regulations were reported for defective drafting in the Sixth Report of Session 2006-07 of the Joint Committee on Statutory Instruments. Regulation 3 amends regulation 7(2) of the 2006 Regulations to make clear that applications for certification that fall to be determined in accordance with Schedule 1 to the 1985 Act as in force immediately before 1st April 2006, the Films (Certification) Regulations 1985 continue to have effect as if the Films (Certification) (Amendment) Regulations 2006 and the Films (Certification) Regulations 2006 had not been made.

## 4. Legislative Background

4.1 Schedule 1 to the Films Act 1985 sets out the requirements to be satisfied for a film to be a British film for the purposes of that Schedule: certification under paragraph 3 of that Schedule as qualifying for tax reliefs. Following the modification of that Schedule by the Films (Definition of "British" Film) (No. 2) Order 2006 this involves a requirement to pass cultural test.

4.2 Paragraph 2(3) and (4) of Schedule 1 requires an applicant for certification to furnish to the Secretary of State information relating to the application and, if the Secretary of State directs, an accompanying statutory declaration as to the truth of the information furnished. Paragraph 10(1) of Schedule 1 confers on the Secretary of State the power to make regulations *inter alia* prescribing the particulars and evidence necessary for satisfying her that a film is a British film. These Regulations amend the particulars required in an application i.e. the circumstances in which a report is required from an independent accountant; and the content of such a report.

## 5. Territorial Extent and Application

5.1. This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

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

## 7. Policy background

7.1 The Films (Certification) Regulations 2006 require applications for the certification of a film as a British film to include particulars to enable the Secretary of State to determine whether the film passes the cultural test for British films in Schedule 1 to the Films Act 1985; and for some of those particulars to be verified by an independent accountant. The 2006 Regulations came into force on 1st January 2007 at the same time as the cultural test and a new film tax relief contained in the Finance Act 2006.

7.2 Since the introduction of the 2006 Regulations the Department has been in discussions with the UK Film Council (which carries out administrative functions relating to certification on behalf of the Secretary of State), applicant film production companies and a number of firms of accountants who regularly provide independent reports as a part of the application process. Concern was expressed that the 2006 Regulations impose costs on applicants in requiring them to employ accountants to verify various particulars in the Schedule to those Regulations which may not be necessary to enable the Secretary of State to make proper decisions about certification.

7.3 The policy objective of the 2006 Regulations is to ensure that applications for certification contain accurate and reliable information to allow the Secretary of State to carry out his certification functions whilst keeping regulatory burdens on applicants to a minimum. The Department agrees that burdens and costs imposed on applicants can be reduced by making the changes mentioned in paragraphs 2.2 and 2.3 above without affecting our ability to properly certify films as British. That is, an independent accountant's report will only be required where the applications seeks points to be awarded relating to principal photography, other areas of work carried out in the making of the film and personnel involved in the making of the film; and the report will no longer be required to verify particulars 21 to 24 of the Schedule to the 2006 Regulations (total core expenditure, UK expenditure, non-UK expenditure and other expenditure).

7.4 The views of accountancy firms and the UK Film Council were taken into account in bringing forward these proposals, and they were supportive.

## 8. Impact

8.1 An Impact Assessment is attached to this memorandum.

## 9. Contact

Wendy Parker at the Department for Culture, Media and Sport (Tel: 0207 211 6428 or e-mail: wendy.parker@culture.gsi.gov.uk) can answer any queries regarding the instrument.

# Summary: Intervention & Options

| Department /Agency: | Title: | |
|---|---|---|
| DCMS | Impact Assessment of amending the Films (Certification) Regulations 2006 | |
| **Stage:** Implementation stage | **Version:** 1 | **Date:** 7 December 2007 |
| **Related Publications:** The Films (Certification) (Amendment) Regulations 2007 | | |

**Available to view or download at:**

http://www.

**Contact for enquiries:** Colin Green **Telephone:** 020 7211 6437

## What is the problem under consideration? Why is government intervention necessary?

To ensure that applications for certification of a film as a British film contain accurate and reliable information which is capable of verification by an independent accountant whilst at the same time keeping regulatory burdens on applicant companies to a minimum. This is achieved by the requirements imposed on applicants by the Films (Certification) Regulations 2006.

## What are the policy objectives and the intended effects?

To amend the 2006 Regulation to reduce the regulatory burden and costs on applicant film production companies by: (a) reducing the amount of information that must be verified by the independent accountant of the particulars mentioned in paragraphs 18 to 20 of the Schedule to the 2006 Regulations; and (b) removing the need for an independent accountant's report where the application does not seek to rely on those particulars.

## What policy options have been considered? Please justify any preferred option.

Option 1 – Do nothing: allow the 2006 Regulations to remain unchanged. This would bring no cost reductions to the sector.

Option 2 – Make the above amendments. This is the preferred option as it will reduce costs incurred by applicant film production companies on employing the independent accountant without increasing the risk of non-compliance.

## When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

A post-implementation review will be done one year after the amendments come into force. The success of the revisions will be measured against the objectives set out in this IA.

## Ministerial Sign-off For SELECT STAGE Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

.....Date: ……

# Summary: Analysis & Evidence

| Policy Option: | Description: Option 2 – Review some of the criteria in the regulations to clarify transitional arrangements and reduce costs on companies. |
|---|---|
| Option 2 | |

**COSTS**

| ANNUAL COSTS | Description and scale of **key monetised costs** by 'main affected groups' |
|---|---|
| **One-off** (Transition) **Yrs** | Cost to accountancy sector will reflect producing fewer and cheaper reports. As this is a simplification, it is not necessary to enter figures for the annual and total costs and benefits. |
| **£ 0** | |
| **Average Annual Cost** (excluding one-off) | **Total Cost** (PV) **£ 0** |
| **£ 0** | |

Other **key non-monetised costs** by 'main affected groups'

**BENEFITS**

| ANNUAL BENEFITS | Description and scale of **key monetised benefits** by 'main affected groups' |
|---|---|
| **One-off** **Yrs** | Cost saving to the film production sector will reflect purchasing fewer and cheaper accountant's reports. |
| **£ 0** | |
| **Average Annual Benefit** (excluding one-off) | **Total Benefit** (PV) **£ 0** |
| **£ 0** | |

Other **key non-monetised benefits** by 'main affected groups'

Reduced regulatory burden. Reduction in use of accountants resources (e.g. paper).

Key Assumptions/Sensitivities/Risks

Average annual certified domestic films = 74. Half will not require accountant's report; half enjoy reduced costs. Film companies will do the same admin work as before for HMRC requirements which could negate most or all of any potential savings but reduces paperwork.

| Price Base Year 2007 | Time Period Years 1 | **Net Benefit Range** (NPV) **£ 0** | **NET BENEFIT** (NPV Best estimate) **£ 0** |
|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | | UK |
| On what date will the policy be implemented? | | | | 1 January 2008 |
| Which organisation(s) will enforce the policy? | | | | DCMS/ UKFC |
| What is the total annual cost of enforcement for these organisations? | | | | £ 0 |
| Does enforcement comply with Hampton principles? | | | | Yes |
| Will implementation go beyond minimum EU requirements? | | | | No |
| What is the value of the proposed offsetting measure per year? | | | | £ n/a |
| What is the value of changes in greenhouse gas emissions? | | | | £ n/a |
| Will the proposal have a significant impact on competition? | | | | No |
| Annual cost (£-£) per organisation (excluding one-off) | Micro **75,000** | Small **125,000** | Medium **0** | Large **0** |
| Are any of these organisations exempt? | No | No | N/A | N/A |

**Impact on Admin Burdens Baseline** (2005 Prices) (Increase - Decrease)

Increase of £ 0 Decrease of £ 0 **Net Impact** **£** 0

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

# Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1. Film plays an important role in British culture. The Government's core aim in providing tax relief is to promote the sustainable production of culturally British films. This aim is supported through:

   a.) Encouraging the production of films that might not otherwise be made;
   b.) Promoting sustainability in British film production; and
   c.) Maintaining a critical mass of UK infrastructure, creative and technical expertise, to facilitate the production of culturally British films.

   The certification of British films for tax purposes is part of this.

2. The Department for Culture, Media and Sport's proposals are for minor revisions to regulations that reduce the costs on small businesses in particular. Government intervention at this stage will help the development of a sustainable UK film industry whose public value has been recognised, and the making of culturally British films which will further establish the image of the UK abroad.

***Background***

3. To be effective, the qualifying criteria for a British film must be clearly understood and easily implemented. To be certified as a British film by DCMS, a film must fulfil either:

   a.) The terms of Schedule 1 to the Films Act 1985; or
   b.) The terms of an international co-production agreement to which the UK is party.

   How applicants are to demonstrate that the requirements of Schedule 1 are met is by providing information prescribed in the Films (Certification) Regulations 2006. In particular they require independent accountants to verify some of the information provided by the applicant. Proposed revisions to those Regulations are the subject of this RIA.

4. Under Schedule 1, the Secretary of State currently certifies a film – and opens the gateway to claim film tax relief - when satisfied that the following criteria are met:

   a.) <u>Cultural Test</u> The film must pass the points-based cultural test reflecting the content of the film, where it was made, who made it, and its contribution to the promotion, development and enhancement of British culture. Separate cultural tests exist for animations and documentaries.

   b.) <u>Moving pictures created specially for the film</u> - Moving pictures from a film by another maker (or from a previously certified film) should comprise no more than 10% of the playing time of the film. In the case of documentary films, and in the light of their subject matter, this limit may be extended at the discretion of the Secretary of State;

5. These tests are retained, but the requirements in respect of information to be verified by independent accountants are reduced.

6. The cultural test for film is compatible with the European Commission's rules for providing state aid through film tax relief.

7. Some of the selection criteria for the current Lottery Funding Programmes include the requirement for a film to wholly or substantially qualify as British. It provides a discretionary grant with recoupment provisions.

***The Need for Government Intervention***

8. Cinematic film provides a universal and readily accessible medium for the expression and representation of British culture and national identity. Where cultural contribution goes beyond providing entertainment, the social benefits often fail to be captured in market transactions. Culturally British films can be regarded as merit goods that the market often fails to provide at the optimum level.

9. It is necessary to prescribe the evidence required for determining that a film is a culturally British film, and these Regulations fulfill that role. They are being modified in order to reduce the administrative and cost burden upon the applicant. They provide efficiency savings by:

a.) not requiring a report from an independent accountant unless an application seeks to rely on points available in relation to where the film was made and who worked on the film;
b.) not requiring such a report to state the accountant's opinion on whether any points should be awarded in relation to where the film was made, only to verify the particulars in that regard;
c.) reducing the requirement where an applicant seeks to claim points for those who worked on a film by removing the implicit requirement to maintain records of both nationality and country of residence of such persons – either will do. This brings the Regulations into line with the relevant part of the Cultural Test as set out in Schedule 1 and also means the report from the independent accountant need verify only one of the criteria, not both;
d.) not requiring such a report to verify total core expenditure, total UK expenditure, total non-UK expenditure, and non-core expenditure.

This does not affect the robustness of the Regulations to prevent abuse of the system

***Consultation***

10. The DCMS met with accountants who said there is no need for them to opine on all cultural points above and beyond the pass mark. For example, requiring all passports of production personnel to be examined to prove one point can be a significant regulatory burden: there can be more than 1,000 passports to check. Although reducing the regulatory burden would mean less work for such accountants, they were concerned to reduce the burden on the small businesses who bear the cost.

# Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

| Type of testing undertaken | *Results in Evidence Base?* | *Results annexed?* |
|---|---|---|
| Competition Assessment | No | No |
| Small Firms Impact Test | No | No |
| Legal Aid | No | No |
| Sustainable Development | No | No |
| Carbon Assessment | No | No |
| Other Environment | No | No |
| Health Impact Assessment | No | No |
| Race Equality | No | No |
| Disability Equality | No | No |
| Gender Equality | No | No |
| Human Rights | No | No |
| Rural Proofing | No | No |

# Annexes

## *Small firms Impact Test*

A large proportion of businesses in the film industry are small (250 employees or less). The views of small businesses were taken account of in 2005 and during the initial formal consultation period for introducing the Cultural Test for film. This was conducted through stakeholder meetings and written responses. We consulted with the Small Business Service during the 2005 consultation period, who were satisfied that the Cultural Test has had little impact on small businesses, and any impact resulting from initial procedural changes, would not be disproportionate to that of other businesses. It is expected that the revised Regulations will only reduce the costs of small firms in the film production sector. The views of accountancy firms of varying size, from small to large, were taken into account in bringing forward these proposals, and they were supportive. No further impact assessment was deemed necessary.