Draft Order laid before Parliament under paragraph 10(5) of Schedule 1 to the Films Act 1985, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

CINEMAS AND FILM

The Films (Definition of "British Film") Order 2006

Made - - - -	*[ ]*
Coming into force - -	*[ ]*

The Secretary of State makes this Order, with the approval of Her Majesty's Treasury, in exercise of the powers conferred on her by paragraph 10(2) of Schedule 1 to the Films Act 1985(**1**).

A draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 10(5) of Schedule 1 to that Act.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Films (Definition of "British Film") Order 2006 and shall come into force on the day after the day on which it is made.

(2) "The Schedule" means Schedule 1 to the Films Act 1985, and a reference to a numbered paragraph is a reference to the paragraph bearing that number in the Schedule.

Transitional provisions

2.—(1) An application for certification under paragraph 2 which is made in relation to a film for which the first day of principal photography is on or after 1st April 2006 shall be determined by the Secretary of State in accordance with the Schedule as modified by this Order.

(2) An application for certification under paragraph 2 which is made in relation to a film for which the first day of principal photography is before 1st April 2006 shall be determined by the Secretary of State in accordance with the Schedule as in force immediately before the commencement of this Order if production is completed before 1st January 2007; otherwise it shall be determined in accordance with the Schedule as modified by this Order.

(3) For this purpose the production of a film is completed when the film is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

(**1**) 1985 c. 21.

Modification of the Schedule

3. In paragraph 1(1)(**2**) (preliminary) omit the definitions of "Commonwealth country" and "film production activity".

4. For paragraph 4(**3**) (British films for purposes of the Schedule) substitute—

"**4.**—(1) A film is a British film for the purposes of this Schedule if the requirements specified in sub-paragraphs (2) and (3) are met.

(2) The first requirement is that throughout the period during which the film is being made the maker of the film is—

(a) a person ordinarily resident in a member State, or

(b) a company which is registered in a member State and of which the central management and control of business is exercised in a member State.

(3) The second requirement is that the film passes the relevant cultural test (see paragraph 4A, 4B or 4C).

(4) For the purposes of this paragraph and paragraphs 4A to 4D a state shall be treated as if it were a member State if—

(a) it is a party to an agreement under Article 310 of the Treaty establishing the European Community, and

(b) the agreement requires a maker of a film who is ordinarily resident or registered in that state to be treated for the purposes of this Schedule in the same way as a maker of a film who is ordinarily resident or registered in a member State.

(5) Her Majesty may by Order in Council provide for films to be treated as British films for the purposes of this Schedule if they are made in accordance with the terms of any agreement between Her Majesty's Government in the United Kingdom and any other government, international organisation or authority.

(6) This paragraph has effect subject to paragraph 5 (excluded films).

4A.—(1) The cultural test for a film other than a documentary (see paragraph 4B) or an animation (see paragraph 4C) is as follows.

(2) A film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 4 points shall be awarded in respect of the content of the film as follows—

(a) 1 point if at least 50% of the film is set in the United Kingdom;

(b) 1 point if at least one of the three principal characters depicted in the film (or, if there are three or fewer characters depicted in the film, any of them) is a British character;

(c) 1 point if the film depicts a British story;

(d) 1 point if at least 50% of the original dialogue is recorded in the English language or in a recognised regional or minority language.

(4) Up to 15 points shall be awarded in respect of work carried out in the making of the film as follows—

(a) up to 6 points depending on the percentage of principal photography that is carried out in the United Kingdom as follows—

(i) 6 points for 75%,

(**2**) Paragraph 1 was amended by S.I. 1999/2386.
(**3**) Paragraph 4 was substituted by S.I. 1999/2386.

(ii) 5 points for 62.5%,

(iii) 4 points for 50%,

(iv) 3 points for 37.5%,

(v) 2 points for 25%,

(vi) 1 point for 10%;

(b) up to 4 points depending on the percentage of the work on visual effects that is carried out in the United Kingdom as follows—

(i) 4 points for 75%,

(ii) 3 points for 50%,

(iii) 2 points for 25%,

(iv) 1 point for 10%;

(c) 1 point if at least 75% of the work on special effects is carried out in the United Kingdom;

(d) up to 2 points depending on the percentage of the work on performing and recording the original music score created for the film that is carried out in the United Kingdom as follows—

(i) 2 points for 75%,

(ii) 1 point for 50%;

(e) 1 point if at least 75% of the work on audio post production is carried out in the United Kingdom;

(f) 1 point if at least 75% of the work on image processing is carried out in the United Kingdom.

(5) Up to 13 points shall be awarded in respect of the personnel involved in the making of the film as follows—

(a) 2 points if the director (or, if there is more than one, the lead director) is a qualifying person;

(b) up to 2 points depending on the number of the scriptwriters who are qualifying persons as follows—

(i) if there is only one scriptwriter, 2 points if he is a qualifying person,

(ii) if there are only two scriptwriters, 2 points if both of them are qualifying persons, 1 point if one of them is,

(iii) if there are only three scriptwriters, 2 points if two or more of them are qualifying persons, 1 point if one of them is,

(iv) if there are more than three scriptwriters, 2 points if two or more of the three lead scriptwriters are qualifying persons, 1 point if one of the three lead scriptwriters is a qualifying person;

(c) 1 point if at least one of the producers (or, if there are more than three, of the three lead producers) is a qualifying person;

(d) 1 point if the composer (or, if there is more than one, the lead composer) is a qualifying person;

(e) up to 2 points depending on the number of the actors who are qualifying persons as follows—

(i) if there are more than three actors, 2 points if two or more of the three lead actors are qualifying persons, 1 point if one of the three lead actors is a qualifying person,

(ii) if there are only three actors, 2 points if two or more of them are qualifying persons, 1 point if one of them is,

(iii) if there are only two actors, 2 points if both of them are qualifying persons, 1 point if one of them is,

(iv) if there is only one actor, 2 points if he is a qualifying person;

(f) 1 point if at least 50% of the cast are qualifying persons;

(g) up to 3 points depending on the number of the heads of department who are qualifying persons as follows—

(i) 3 points for five or more,

(ii) 2 points for three or four,

(iii) 1 point for one or two;

(h) 1 point if at least 50% of the production crew are qualifying persons.

4B.—(1) The cultural test for a documentary is as follows.

(2) A film passes the cultural test if it is awarded at least 16 points in total.

(3) Up to 4 points shall be awarded in respect of the content of the film as follows—

(a) 1 point if at least 50% of the film is set in the United Kingdom;

(b) 1 point if at least one of the three principal characters depicted in the film (or, if there are three or fewer characters depicted in the film, any of them) is a British character;

(c) 1 point if the film depicts a British story;

(d) 1 point if at least 50% of the original dialogue is recorded in the English language or in a recognised regional or minority language.

(4) Up to 15 points shall be awarded in respect of work carried out in the making of the film as follows—

(a) up to 6 points depending on the percentage of the work on shooting and visual effects that is carried out in the United Kingdom as follows—

(i) 6 points for 75%,

(ii) 5 points for 62.5%,

(iii) 4 points for 50%,

(iv) 3 points for 37.5%,

(v) 2 points for 25%,

(vi) 1 point for 10%;

(b) up to 4 points depending on the percentage of the work on research and development that is carried out in the United Kingdom as follows—

(i) 4 points for 75%,

(ii) 3 points for 50%,

(iii) 2 points for 25%,

(iv) 1 point for 10%;