

*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

1999 No.

CINEMAS AND FILMS

**The Films (Modification of the
Definition of “British Film”) Order 1999**

Made - - - - 1999
Coming into force - - 1999

Whereas a draft of this Order has been laid before, and approved by resolution of each House of Parliament pursuant to paragraph 10(5) of Schedule 1 to the Films Act 1985(1);

And whereas Her Majesty’s Treasury have, pursuant to paragraph 10(2) of Schedule 1 to the Films Act 1985, approved the terms of the Order;

Now, therefore the Secretary of State, in exercise of the powers conferred upon him by paragraph 10(2) of Schedule 1 to the Films Act 1985 and all other powers enabling him in that behalf, hereby makes the following Order—

Citation, commencement and transitional provisions

1.—(1) This Order may be cited as the Films (Modification of the Definition of “British Film”) Order 1999 and shall come into force on the day after the day on which it is made.

(2) An application for certification under paragraph 2 of Schedule 1 to the Films Act 1985 (“the 1985 Act”) which is made within the period of twelve months starting with the date of commencement of this Order shall, if the applicant so elects, be determined by the Secretary of State in accordance with Schedule 1 as it stood before the commencement of this Order.

(3) After the commencement of this Order the reference in the definition of “relevant film” in section 3(7) of the 1985 Act to the conditions that must be satisfied under Schedule 1 to the 1985 Act shall be construed as a reference to the conditions that must be satisfied under that Schedule as amended by this Order.

Modification of Schedule 1 to the Films Act 1985

2.—(1) The modifications of Schedule 1 to the Films Act 1985 set out in articles 3–9 shall have effect.

(1) 1985 c. 21.

(2) Schedule 1 as modified by this Order is set out in the Appendix to this Order.

Modification of paragraph 1 of Schedule 1

3.—(1) Paragraph 1(1) of Schedule 1 shall be modified as follows:

(2) After the definition of “film” insert—

““film production activity”, in relation to a film, means any activity undertaken for the purposes of the production of the film;”.

(3) Omit the definitions of “sound recording” and “studio”.

4. For paragraph 1(2) of Schedule 1 there shall be substituted—

“(2) For the purposes of this Schedule 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”.

5. For paragraph 1(4) of Schedule 1 there shall be substituted—

“(4) The Secretary of State may direct that a number of films shall be treated as a single film for the purposes of this Schedule if—

- (a) they form a series with not more than twenty-six parts;
- (b) the combined playing time is not more than twenty-six hours; and
- (c) in the opinion of the Secretary of State the series constitutes a self-contained work or is a series of documentaries with a common theme.”

Modification of paragraph 4 of Schedule 1

6. For paragraph 4 of Schedule 1 there shall be substituted—

“4.—(1) Subject to paragraph 5, a film is a British film for the purposes of this Schedule if all the requirements specified in sub-paragraphs (2) to (4) are satisfied with respect to it.

(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 in the case of which the central management and control of business is exercised in a member State.

(3) The second requirement is that at least 70 per cent of the total expenditure incurred in the production of the film was incurred on film production activity carried out in the United Kingdom.

(4) The third requirement is that not less than the requisite amount of labour costs (as determined under paragraph 7) represents payments paid or payable in respect of the labour or services of—

- (a) Commonwealth citizens,
- (b) citizens of a member State, or
- (c) persons ordinarily resident in a Commonwealth country or a member State.

(5) For the purpose of calculating the total expenditure incurred in the production of a film pursuant to sub-paragraph (3), the following shall be disregarded—

- (a) any amount deducted under paragraph 7(2)(a) or, as the case may be, paragraph 7(2)(b) in calculating the amount which is the lesser amount for the purposes of paragraph 7(1);

- (b) any expenditure incurred on the acquisition or licensing of copyright, trademarks or rights of a similar nature, other than copyright in works created for the purpose of their use in the film;
 - (c) any expenditure, including the payment of interest, incurred for the purposes of raising or servicing finance for making the film; and
 - (d) any business overheads attributable to the film.
- (6) A state shall be treated for the purposes of this paragraph as if it were a member State if—
- (a) it is 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.
- (7) 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.”

Modification of paragraph 5 of Schedule 1

7. For paragraph 5 of Schedule 1 there shall be substituted—

“5.—(1) Subject to sub-paragraph (2), a film is not a British film for the purposes of this Schedule by virtue of paragraph 4(1) if parts of the film are derived, from—

- (a) any film of which the master negative, tape or disc is certified under paragraph 3(1), or
- (b) any film not made by the same maker as the first-mentioned film

and the playing time of those parts exceeds 10 per cent of the total playing time of the film.

(2) The Secretary of State may direct that sub-paragraph (1) shall not apply in relation to a film if in his opinion—

- (a) it is a documentary; and
- (b) its subject matter makes it appropriate for sub-paragraph (1) not to be applied.”

Modification of paragraph 6 of Schedule 1

8. Paragraph 6(3) of Schedule 1 shall be omitted.

Modification of paragraph 7 of Schedule 1

9.—(1) Paragraph 7 of Schedule 1 shall be modified as follows.

(2) In paragraph 7(1)—

- (a) for “paragraph 4(2)(c)” substitute “paragraph 4(4)”, and
- (b) omit the words “(subject to sub-paragraph (3) of this paragraph)”.

(3) In paragraph 7(2)(a) for “three-quarters” substitute “seven-tenths”.

(4) In paragraph 7(2)(b) for “four-fifths” substitute “three-quarters”.

(5) For paragraph 7(3) substitute—

“(3) Paragraph 4(6) has effect for the purposes of this paragraph as it has effect for the purposes of paragraph 4.”

1999

Secretary of State for Culture, Media and Sport

We consent to this Order

1999

Two of the Commissioners of Her Majesty's
Treasury

APPENDIX

SCHEDULE 1

Sections 3, 5 and 6.

CERTIFICATION FOR PURPOSES OF SECTION 72 OF THE FINANCE ACT 1982 IN CASE OF BRITISH FILMS

Preliminary

1.—(1) In this Schedule—

“Commonwealth country” means the United Kingdom, any country for the time being specified in Schedule 3 to the British Nationality Act 1981 (countries whose citizens are Commonwealth citizens), and any territory for whose international relations Her Majesty’s Government in the United Kingdom is responsible;

“film” includes any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture;

“film production activity”, in relation to a film, means any activity undertaken for the purposes of the production of the film;

“maker”, in relation to a film, means the person by whom the arrangements necessary for the making of the film are undertaken;

“master disc”, in relation to a film, means the original master film disc or the original master audio disc of the film;

“master negative”, in relation to a film, means the original master negative of the film and its soundtrack (if any);

“master tape”, in relation to a film, means the original master film tape or the original master audio tape of the film.

(2) For the purposes of this Schedule 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.

(3) Subject to sub-paragraph (4), each part of a series of films shall be treated as a separate film for the purposes of this Schedule.

(4) The Secretary of State may direct that a number of films shall be treated as a single film for the purposes of this Schedule if—

- (a) they form a series with not more than twenty-six parts;
- (b) the combined playing time is not more than twenty-six hours; and
- (c) in the opinion of the Secretary of State the series constitutes a self-contained work or is a series of documentaries with a common theme.

(5) Any reference in this Schedule to a master negative, tape or disc certified under paragraph 3(1) or to a certificate issued under that provision includes a reference to a master negative, tape or disc certified in pursuance of section 72(7)(b) of the Finance Act 1982 as originally enacted or to a certificate issued in pursuance of that provision.