



Cultural test for British films: Consultation

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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.

This consultation paper contains the Department for Culture, Media and Sport's proposals for a new cultural test better to identify culturally British films that might be considered eligible for the new tax relief in line with the European Commission's rules on State Aid. This paper should be read in conjunction with the HMT proposals for the reform of the film tax reliefs:

The Reform of Film Tax Incentives: promoting the sustainable production of culturally British films

- 1.1 The Department for Culture, Media and Sport has been working with the UK Film Council to design a new cultural test for British films. It is expected that all films applying for the new tax incentives will need to pass. We would welcome comments on the proposed test set out at Annex A.
- 1.2 The aim of the new cultural test is to apply objective criteria to the measurement of cultural attributes in order better to identify culturally British films. The proposal is to award points for those elements that contribute to the cultural value of a film. Points will be awarded in following areas:

Section A: Cultural Content

This section will measure the British subject matter of the film. It is envisaged that points will be awarded for setting the film in the UK (or other state in the case of co-productions); the national or residential status of the principal characters; basing the film on a story by a British writer (or other state writer in the case of co-productions); or filming mainly in the English language (or language of other state in the case of co-productions). We would welcome your views on these categories, but specifically on whether the weighting points for the location of the film should be graded.

Section B: Cultural Hubs

This section will measure the use of the UK's film making facilities. It is envisaged that points will be awarded for the use of UK (or other state in the case of co-productions) facilities for pre-production, location shooting, music recording and other post production activities. Points will

also be awarded for the use of UK (or other state in the case of co-productions) studios and visual effects facilities. We would welcome your views on these categories, but specifically on: whether the weighting points for the use of studios and visual effects facilities should be graded.

Section C: Cultural Practitioners

This section will measure the use of personnel with creative input into the cultural value of a film. Points will be awarded for the use of UK or EEA nationals or residents in key filmmaking roles. We would welcome your views on these categories, but specifically on how principal actors can be easily identified.

- 1.3 We would welcome your views on whether there are other elements of film production that should have a significant impact on this test. We would also be interested in your views whether categories should be varied for animation or documentaries.
- 1.4 We would welcome your views on how the sections should be weighted. The cultural test is expected to have an overall pass mark between 15 and 20 points. It is our intention that there will be flexible paths to achieving this pass mark. We would welcome your views on the level this should be set at, and whether alternative levels should be set for animation or documentaries.
- 1.5 When the test is introduced, the Department for Culture, Media and Sport will also issue detailed guidance on how the tests will be applied. We would welcome your views on what this guidance ought to cover.
- 1.6 Finally, the Regulatory Impact Assessment accompanying these proposals assumes that the new cultural test will be less burdensome than the current certification criteria. We would welcome your views on the likely overall impact of the proposed test.

The deadline for consultation responses is 21 October 2005. Comments should be sent to :

Paul Candler
Head of Film Branch
Department for Culture, Media and Sport
2-4 Cockspur Street
LONDON SW1Y 5DH

Please note all information in responses, including personal information, may be subject to publication or disclosure under the Freedom of Information Act 2000. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation.

If you have any questions or complaints about the process of consultation on this paper, please contact Liz Sweet, Consultation Co-ordinator, Strategy, Policy and Delivery Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH, liz.sweet@culture.gov.uk

ANNEX A: The New Cultural Test

It is envisaged that for co-productions “UK” will be substituted by “UK or State” to enable elements from both countries to score points.

A film qualifies if it scores [x] points or more out of [30].

	Notes	Weighting Points
Section A: Cultural Content		
Set wholly or mainly in the UK or a representation of the UK		2*
Principal characters wholly or mainly British or residents in the UK		1
Based on an [original] story by a UK writer		1
Filmed wholly or mainly in the English Language	(including [official] regional or minority language)	1
Total		[5]
Section B: Cultural Hubs		
	Must be in the UK	
Pre-production office		1
Location shooting		1
Shooting studio		3**
Visual effects		3
Music recording		1
Other post production		1
Total		[10]
Section C: Cultural Practitioners		
	Must be EEA nationals/residents	
Director		2
Scriptwriter		2
Composer		1
Principal actor first role		3
Principal actor second role		2
Principal actor third role		1
Cinematographer		1
Costume designer		1
Film Editor		1
Production designer		1
Total		[15]
		[30]

* 2 points will be awarded for more than 50% set in UK, 1 point for any.

** 3 points will be awarded for more than 50% UK studio shooting, 2 if 25% – 50% and 1 if any.

ANNEX B: Partial Regulatory Impact Assessment

Title of Proposal

1. Cultural Test for British Films (Schedule 1 to the Films Act 1985)

Objective

2. 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.
3. The Department for Culture, Media and Sport's proposals are for a new cultural test to better identify culturally British films that might be considered eligible to claim the new tax relief in line with the European Commission's rules on State Aid.
4. Without Government intervention at this stage, support for the film industry may not be as effective as it could be. This is why we are holding a public consultation on the proposed cultural test.

Background

5. Currently, for a film to be certified as a British film by DCMS, it 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 (including the European Convention).
6. Under Schedule 1, the Secretary of State certifies a film when satisfied that the following criteria are met:
 - I. The Maker Test (Who makes the film)**

A film must be made by a maker of the UK or another member state of the EEA. "Maker" means the person ordinarily resident in a member state or a company registered, centrally managed and controlled in a member state making arrangements for filmmaking throughout the time the film is made;
 - II. Moving Pictures created specially for the film (content of the film)**

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;
 - III. The production costs test (Cultural Hubs)**

Expenditure incurred on filmmaking activity carried out in the UK must account for at least 70% of the production costs of the film; and

IV. The labour costs test (Cultural Practitioners)

The labour costs of citizens or ordinary residents of member states of the EEA and the Commonwealth must account for at least 70% (or 75%*) of the total labour costs of the film. Before doing this calculation, the applicant may if they desire deduct the cost of one (*or two) persons who are not from a member state or the Commonwealth.

7. We also want to ensure that the cultural test is compatible with the European Commission's rules for providing state aid.

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. As the Secretary of State has recently stated, there is a distinction to be made between entertainment and cultural engagement. Where cultural contribution goes beyond providing entertainment in this sense, the social benefits often fail to be captured in the transactions that people undertake in the market. In this regard culturally British films can be regarded as merit goods that the market often fails to provide at the optimum level.
9. The social benefits that attach to cultural production suggest that there is a public interest in ensuring greater supply than the market would otherwise provide. Without Government intervention, a richer, more diverse and more representative range of voices may not emerge, resulting in a more impoverished and limited range of choices for the public. The aim of support is to address the market failure in the supply of culturally British films by way of an incentive for specific behaviour – the production of culturally British films.
10. The introduction of a new cultural test to ensure only culturally British films will benefit from the relief will also increase the likelihood of obtaining speedy approval from the Commission.

Options

Option 1 – Do nothing: allow the criteria in Schedule 1 to the Films Act 1985 to remain unchanged.

11. Leaving the current tests to run in their current form would not address the Government's concerns that the way in which they have been used has made them not as efficient as they could be in supporting the production of culturally British films.
12. In addition, there is the risk that the European Commission would not consider the tests compatible with State Aid rules.

Option 2 – Decouple Schedule 1 to the Films Act 1985 from the tax reliefs.

13. Decoupling certification from tax reliefs would be an inefficient use of resources, as certification would still need to continue for lottery and co-production purposes. (In the case of the latter, certification would still be required for producers to obtain foreign tax relief).

Option 3 – Review some of the criteria in Schedule 1 to the Films Act 1985 to incorporate a new cultural test.

14. Determining the films which qualify for the new tax relief by the introduction of a new cultural test will ensure that films are genuinely culturally British. This test will be administered by the Department for Culture, Media and Sport in a similar way to the current certification process based on the 1985 Films Act. This will meet the requirements of the State Aid rules for support to film production and provide a sound basis for making a formal application to the Commission.

Sectors and groups affected

15. The new cultural test is targeted directly at the UK film production sector and in addition to individual cast and crew, there are currently between 4000 and 5000 UK companies either directly involved in film production or who provide the necessary services to film producers (such as studio facilities, sound, lighting, post production and special effects). All will be directly affected by the new cultural test.
16. Indirectly affected will be the film financing sectors, in particular banks lending money to producers, and sectors that market and exploit the film once it is completed.

Benefits

17. The introduction of a new cultural test will benefit the UK film industry and film culture in the UK by encouraging the use of British content and hubs.

Policy costs

18. None identified.

Implementation and Compliance costs

19. The new cultural test will be based primarily on objective criteria to determine the cultural content of a film. This test is likely to be less burdensome than the current certification tests.

Small firms Impact Test

20. We will consult with the Small Business Service during the consultation period.

Competition Assessment

21. There will be no impact on competition from the new tests. However, officials are working with the European Commission to ensure that the tests comply with European competition rules on State Aid.

Monitoring and Evaluation

22. The new tests will be kept under continuous review. This information will also be linked with data from HMT and UKFC and from other sources on the distribution and performance of British films at the box office and through other channels. This will allow the performance of the test against its wider objectives to be assessed and a judgement made about the effectiveness of the tests.



**Department for Culture,
Media and Sport**
2-4 Cockspur Street
London SW1Y 5DH
PP 848 July 2005