

EXPLANATORY MEMORANDUM TO
THE CULTURAL TEST (TELEVISION PROGRAMMES) (AMENDMENT) (NO. 2)
REGULATIONS 2015

2015 No. 1941

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Culture, Media and Sport and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument enables television programmes made in accordance with the revised UK-South Africa audio-visual co-production treaty, and the new UK-Brazil audio-visual co-production treaty, to access national benefits in the UK such as tax relief which stem from the treaties. The purpose of such treaties is to provide an official framework under which film and television producers in the UK and the co-production country can share financial, technical and creative resources to enable them to make their films and 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 this instrument is subject to the negative procedure and has 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 2013 (S.I. 2013/1831). By adding the new UK-Brazil and recently revised UK-South Africa treaties to that list, this instrument ensures that co-produced television programmes made in accordance with those treaties 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 This instrument extends to all of the United Kingdom.
5.2 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does 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 audio-visual treaty with South Africa was signed in 2006 and covered film co-productions only. It has been amended to also allow television programmes to qualify as co-productions in addition to films. The treaty with Brazil was signed in 2012 and covers both film and television programmes. 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 2015¹.
- 7.3 The new UK-Brazil and revised UK-South Africa treaties must be added to the list of international agreements in Schedule 1 to the Cultural Test (Television Programmes) Regulations 2013 to enable qualifying co-produced television programmes made under the treaties to be certified as British television programmes in accordance with those Regulations. Such designation entitles co-produced programmes to national incentives in the UK, including high-end television tax relief. The treaties 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 with respect to the growth and competitiveness of these industries and to the enhancement of their creative cultures.
- 7.4 The definition of "film" in the audio-visual co-production agreement with South Africa has been amended to mean "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, and which is expected to be exhibited to the public at a cinema, on television or any other distribution platform." This amendment to allow television programmes to qualify reflects the trend towards "high end" television (typically programmes with production budgets of more than £1 million per broadcast hour) for which the UK introduced a dedicated and highly successful tax relief in 2013.

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.

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

This informed the ‘model treaty’ text on which both of the treaties being added by these Regulations are based.

- 8.2 Whilst no formal consultation was carried out in respect of these two treaties, the television industry has actively sought the amendment of the UK-South Africa treaty to include television within the existing treaty and will welcome the implementation of this revision. They also welcomed the signature of an audio-visual treaty with Brazil and are actively lobbying for its implementation and completion in both countries, in order that it can be used by film and TV production companies as soon as possible.

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 for Culture, Media and Sport by the British Film Institute (BFI). Guidance on applying for qualification under international co-production agreements is available on the BFI’s website: <http://www.bfi.org.uk/film-industry/british-certification-tax-relief/co-production#bi-lateral-co-production-treaties>.

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 two 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 Her Majesty’s Revenue and Customs and Her Majesty’s Treasury have approved the following estimates.
- 10.4 The extension to the UK-South Africa co-production treaty to allow television programmes to qualify is highly likely to bring further investment into 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.
- 10.5 For the UK-Brazil treaty, the cost of the high end television tax relief – on the basis of one such production with a UK production spend of £1.5 million at the low end and two such productions at £5 million each at the upper end – puts the cost range between £0.3 million and £2 million per annum. The portion of UK high-end television expenditure incentivised by a treaty is assumed to be between £1 million and £5 million per annum.

11. Regulating small business

- 11.1 The legislation does apply to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise 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 British Film Institute'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 Culture, Media and Sport. Telephone: 0207 211 6307 or email: james.butler@culture.gov.uk can answer any queries regarding the instrument.