

GUIDANCE NOTES

CERTIFICATION OF A BRITISH FILM: FILMS ACT 1985

(These guidance notes may be updated periodically: **Newsflash FEBRUARY 2002** - see *new sections on Parts 8A and 9A of the certification application form*. Other recent amendments included are guidance on treatment of production fees, production overhead fees and insurance premiums; on exclusion of living expenses; on disregarded costs; on treatment of costs & excluded costs (eg insurance); on series; on deferrals.)

Please read the application form and these guidance notes carefully before completing the form.

1. Schedule 1 to the Films Act 1985 sets out the requirements that must be satisfied for a master negative, master tape or master disc to qualify for certification as a British film.
2. Applications can be made by a person who has incurred expenditure on the production of the master negative, master tape or master disc. Films may qualify for certification:
 - i) by satisfying the specific provisions of Schedule 1 under the 1999 amended criteria;
 - ii) by satisfying the terms of one of the UK's co-production treaties.
3. The text of Schedule 1 to the Films Act 1985, a summary of it, this guidance, and details of the benefits of qualifying, may be accessed at: www.culture.gov.uk To find it, click firstly on "creative media & arts"; then on "film" on the bar across the screen; then on "british qualifying film" to the right of the screen. The texts, in pdf format, can be downloaded through the standard version of our web-site, not the text-only version. (The texts of the UK's co-production treaties, with separate guidance, may be accessed at the same web-location.)
Application forms are obtainable from DCMS: contact chantel.burrell@culture.gov.uk (Tel: 020 7211 6436) or charlotte.eley@culture.gov.uk (Tel: 020 7211 6476); fax: 020 7211 6417.
4. **Applicants are advised DCMS cannot guarantee that certificates will be issued by a particular date. Due to the fluctuating amount and quality of applications, it is not possible for DCMS to determine times by which certificates will be issued. Where applicants are aware of a deadline by which a certificate will be required, they should submit their application in good time and attach information about the deadline. Prior to April 5th, a very great increase in the number of applications is expected and applicants should submit them as early as possible. Late applications present an increased risk of missed deadlines for which DCMS accepts no liability.**

DCMS does not issue "advance clearance" of applications. Actual applications can only be accepted after completion of the film. However, where there is any doubt at all as to whether the film is eligible for certification as a British Film, the Department should be consulted at an early stage. In cases of difficulty, applicants may be asked to provide further supporting evidence or, where appropriate, arrange for the film to be seen by Department officials. The interpretation of any statute is ultimately a matter for the courts. Subject to this the DCMS hopes that the following notes on the legislation will be of assistance.

FILM

5. A "film" for present purposes 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.

COMPLETION OF THE FILM

6. For present purposes, the production of a film is deemed to be 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.

SERIES (see Part 3 of the certification application form)

7. The usual rule is that, for the purpose of certification, each part of a series must be treated as a separate film. However, the Secretary of State for Culture, Media & Sport has the discretion to consider a series as a single film if:

- (a) the series comprises no more than 26 parts which do not exceed a playing time of 26 hours in total; and
- (b) the Secretary of State for Culture, Media and Sport considers that the series, is either:
 - (i) a self contained work; or
 - (ii) a documentary series with a common theme.

Within those limits, for a series to qualify as a single film, one application form should cover all of the parts or episodes of the series. Applications which would ask for only some of the parts of a series to be considered, "a self contained work", may be problematic. Therefore, in cases where an applicant, for whatever reason, wishes to apply for only some parts of a series to be certified, such applicants are asked to refer to the notes below for "non-qualifying series".

8. **Qualifying Series** Information should be given in the application to demonstrate how overall the different parts or episodes comprise a series. This might include mention of how the episodes were commissioned as a series.

For non-documentaries, this should then go on to demonstrate how the series is a self contained work: eg by its common storyline, cast and/or crew, a common narrator, common theme music and common titling etc.

For documentaries, the common theme of the series will need to be shown. (An outline or script synopsis may prove useful in providing this information.) A single accountant's report is required to show how the series as a whole, rather than each episode individually, qualifies under the production cost and labour cost requirements.

In relation to series, please also see the note about common titling in *paragraph 12* below.

9. **Non-qualifying Series** A series not meeting the definition will only be eligible if each episode qualifies individually. The episode must be treated as a film in its own right. Usually individual applications form and accountants' reports would be completed. However, a single application form may be completed with a schedule of accompanying programmes on condition

that it is made clear that the information applies to each episode. Details unique to each episode might include, for example: the dates when production began and was completed; the running time of the episode; the amount of previously filmed material; a summary of expenditure; details of labour costs.

A single accountants' report may be made out for such applications, but it must demonstrate that each episode has been audited individually and qualifies on its own merits under the production expenditure and labour cost requirements. The accountants' report should therefore contain additional wording to that effect, and the following wording is suggested:

"We confirm that the information contained in the application applies to each episode individually and we confirm that each episode has been audited individually and qualifies on its own merits under both the production expenditure and labour cost requirements."

The accountants' report should also state the title of the series and to which episodes of the series the report applies. For other notes on the accountants' report see 53-54 below.

MAKER (see Part 4 of the certification application form)

10. a) The maker of the film must, throughout the time the film was made, be either-

- (i) a person ordinarily resident in a member State; or
- (ii) a company both registered in a member State and whose business is centrally managed and controlled in a member State.

N.B. A Partnership may be the maker of the film on condition that each of the partners was ordinarily resident in a member State throughout the time the film was being made.

A member State is:

a country of the European Union or a country of the European Economic Area or a country with which the European Community has signed a relevant European Association agreement. (See attached schedule 1)

b)The "maker", in relation to a film, means the person who undertakes the arrangements necessary for the making of the film.

OTHER MAKERS AND PREVIOUSLY CERTIFIED FILMS (Part 7 of the application form)

11. No more than 10% of the playing time of a film put forward for certification must comprise

- a) parts of a film which has already been certified;
- b) parts of a film made by a different maker.

This will not apply in cases where the Secretary of State for Culture, Media and Sport considers a film to be a documentary film, the subject matter of which makes it appropriate in the Secretary of State's opinion for more than 10% in either category to be included.

CREDITS AND TITLING

12. On applications for qualifying series and for episodes of series, it should be noted that common titles and credit sequences are only considered as original material on the first occasion on which the episode or series in which they appear is certified. If a subsequent series or episode is put forward for certification sharing the same common titles and credit sequences, then those titles and credits will be regarded as previously certified work: the 10% limit for previously certified material will apply.

THINGS TO LEAVE OUT OF THE SUMMARY OF EXPENDITURE (see Part 8A of the form)

13. **Excluded Costs** The following costs are not considered part of the production cost for the purposes of qualification and should be excluded prior to making any calculation:

i) **Excluded labour costs of one or two persons:** where the costs of one or two people engaged in making the film (inclusive of their living expenses) have been deducted before making the calculation in respect of the separate labour cost test (see *para's 30 & 34* below), the same deduction (inclusive of their living expenses) must be made before making the calculation in respect of the 70% production cost test.

ii) **Acquisition/Licensing costs:** exclude any expenditure on the acquisition or licensing of copyright, trademarks or similar rights - except for copyright in works created for the purpose of their use in the film. For example, the cost of acquiring a licence for pre-existing music should be excluded but not the costs of music specially composed and/or recorded for the film. Similarly, in respect of archive footage, expenditure on the acquisition of licensing of copyright in archive footage should be excluded from production expenditure altogether in any instance where such archive footage was not specifically created for the film.

iii) **Financing costs:** exclude any interest on money borrowed to finance production and any other costs connected with raising and servicing finance to make the film.

N.B. The costs of legal and accounting fees may however be included in the production expenditure where they relate to the making of the film (see also *para 45* below)

iv) **Business Overheads:** exclude any business overheads attributable to the film. Expenditure should be classed as "business overheads" where it was not attributable to the production activity of the film, and are to be identified by reference to normal accountancy principles.

v) **Exploitation Costs:** exclude any expenditure on the creation and production of any additional material which is produced primarily for promotional and marketing work.

vi) **Original costs relating to replaced elements of production following insurance payouts** In circumstances where there is an insurance payout relating directly to costs incurred in, for example, (but not limited to,) re-shooting lost footage or replacing lost time or by nature of its being part of the production claim replacing any element of the production that is lost such that it cannot be included in the final film, then the original costs (against which the claim is being made) shall be discounted from the overall cost of production. In effect, if something happens twice due to an insurance claim, then the first monies shall not be included in the total cost but the replacement insurance shall be included in the total production cost. The distinction is that an insurance spend is replacement finance rather than additional finance.

THE PRODUCTION EXPENDITURE TEST (see Part 8 of the form)

14. **70% of the total production cost of the film must be spent on film production activity carried out in the UK**

15. It is important to note that the percentage calculation relates to the cost of production activity actually carried out in the United Kingdom and not to production cost on goods and services supplied from the United Kingdom.

16. The Department does not wish to put makers and accountants to undue trouble and expense in extracting details of expenses for the completion of the certification application form if the inclusion or non-inclusion of such expenses is not likely to affect the British nature of the film. It may not be necessary to assess expenditure on UK and non-UK activity for each line item.

17. Production cost sheets and/or supporting documentation will however need to demonstrate the split in costs in adequate detail for audit and certification purposes. A sample production cost sheet designed to show UK and non-UK activity in this way is contained in the application form (available from DCMS).

18. i) It is recommended that, where feasible, arrangements are made to track expenditure that relates to UK and non-UK activity as early as possible. Where necessary, invoices from any supplier used should be broken down to show UK and non-UK activity, and non-labour costs and labour costs with computerised accounts formatted to accept the information in this form. This will also facilitate the audit that must be carried out by independent accountants on completion of production to confirm that the production expenditure tests have been met. However, it is appreciated that this may not be necessary or feasible in all cases and that reasonable apportionments will then need to be demonstrated.

ii) Normally tracking expenditure between UK and non-UK activity will be on a time basis unless it can be shown that this basis is not appropriate:

Example 1: If two weeks of a ten week shoot take place outside the UK, firstly the total costs attributable to the shoot should be established and secondly the UK and non-UK costs should be fairly and reasonably apportioned pro-rata to UK and non-UK shooting time.

Example 2: a camera is bought/hired either in the UK or out of the UK but is used for an equal period of time for filming in the UK and outside the UK. A value should be attributed to use of the equipment inasmuch as it relates to making the film (i.e. less any residual value). The qualifying expenditure, fairly and reasonably apportioned in this case, would normally be 50% of the equipment cost net of the residual value.

A cost will equally need to be assigned to, for example, costumes, props, special effects equipment, film stock lighting and sound equipment when used in and out of the UK for the film.

19. For some items, such as allowable costs of copyright acquisition, etc and related labour fees, a time basis may not be appropriate. Such items may include:

- cost of acquisition of copyright (in works, including music, specifically created for use in the film);

- associated labour costs (i.e. for the act of writing or composing) not covered by the copyright fee and which did not take place during the period of production activity;
- executive producer fee on condition that the fee relates to services the executive producer has given through being directly engaged in making the film;
- the production overhead fee, where this relates to the total film-making activity (i.e. UK and non-UK activity). Where the production overhead fee relates to UK activity alone or non-UK activity alone, then a breakdown of the overheads should always be given;
- net completion bond fee;
- the net premium for some forms of insurance eg key man insurance on condition that the net premium is wholly and exclusively attributable to the business rather than to an individual engaged in making the film. Insurance which relates to the cost of raising or servicing finance in the production should not be included (see also *para's 13(vi) & 28* on insurance payouts).

The percentage split between qualifying UK production activity spend and non-qualifying non-UK production activity spend for such items should be in the same proportions as the overall percentage split for the all the rest of the production expenditure.

The Skills Investment Fund

20. Contributions to the Skills Investment Fund (SIF) will be considered a qualifying cost. Contributions to other levies, such as those imposed by trade organisations, are not qualifying costs and should not be included.

21. The SIF is a joint film industry/Government initiative to fund training to develop the skills and talent to help ensure the UK film industry's future. All films intended for theatrical first release and whether partially or wholly shot in the UK (features, documentaries and shorts) are asked to make a voluntary contribution to the SIF.

22. The contribution to the SIF is calculated as 0.5% of the budget of the film up to a maximum contribution of £39,500. For films that receive production funding from a public body, or expect to qualify as a British film under the Films Act 1985, the contribution to the SIF will be calculated on the total production budget. (NB The SIF contribution is calculated when the budget is drawn up prior to commencement of principal photography. All other calculations relating to the qualifying criteria for a British film must relate to the final production costs as they stand or will stand on completion of the film as defined under Schedule 1: see *para 29* below.)

23. Detailed guidance on how to calculate and pay the SIF contributions is available from Skillset, the National Training Organisation for Broadcast, Film, Video and Multimedia, at: Skills Investment Fund, Skillset, 2nd Floor, 91-101 Oxford Street, London W1R1RA.
Tel: 020 7534 5300 Fax: 020 7534 5333 E-mail: deborahb@skillset.org

24. Labour

i) The costs of labour must be taken into account (including deferred and contingent payments etc., described at *para 37 & 38* below) when applying the production cost test, and a value attributed

to UK and non-UK activity. (NB Labour is therefore treated differently under the production cost test than it is under the labour cost test set out from *para 33* on)

ii) As set out above in *para 13(i)*, the only exception is where the costs of one or two people engaged in making the film (inclusive of their living expenses) have been deducted before making the calculation in respect of the separate labour cost test (see *para 33* below). In that event, the same deduction (inclusive of their living expenses) must be made before making the calculation in respect of the 70% production cost test.

25. Living expenses Apart from the circumstances set out in the paragraph above, living expenses excluded from the labour costs test should be included for the purposes of the 70% production cost test.

26. Travel Costs Travel costs which relate to film production activity undertaken in the UK will be considered as a qualifying cost. In respect of travel costs which relate to production activity undertaken outside the UK, any outward journey away from the UK should be included with the non-UK costs (i.e. as non-qualifying spend); and any return journey to the UK should be included with the UK costs (i.e. as qualifying spend).

27. Disregarded Costs In certain circumstances, the Secretary of State may, in ascertaining the labour costs of a film, disregard any sum or part of a sum paid or payable in respect of the labour or services of any particular person. This will be done where the sum in question is so great or small that it does not appear to the Secretary of State to be a bona fide payment for the labour or services in question. Applicants may be asked to provide further information to the Department in relation to unusually large or small fees. In such cases, the disregarded sum will also be disregarded for the purpose of the production activity expenditure test.

28. Insurance payouts

The percentage split between UK and non-UK production activity spend of a replacement insurance payout will depend on what that replacement money has been spent and should be attributed as set out above from *para 14*.

This relates to where replaced elements of production following insurance payouts and how they relate to original costs of production. See *para 13(vi)* above.

29. The production activity of the film will be regarded as complete 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.

THINGS TO LEAVE OUT OF THE LABOUR COSTS TEST (see Part 9A of the form)

30. ONE OR TWO EXCLUDED PERSONS: Applicants may, if they desire, exclude the costs of one or two persons from the labour costs test This is the test in Parts 9 to 12 of the application form. This means that the costs of one or two people engaged in making the film (inclusive of their living expenses) can be deducted before making the calculation in respect of the labour cost test (see *para 34* below). Applicants typically use this provision where the film includes one or two foreign stars at very great cost, which would make it impossible to pass the labour costs test but for this provision.

N.B. The same deduction (inclusive of their living expenses) must be made before making the calculation in respect of the production cost test (see *para 13(i)* above).

31. LIVING EXPENSES: The labour costs of a film will not include payments which
- (a) are in respect of living expenses which a person incurs because it is not reasonably practicable for him to reside at his usual place of residence while directly engaged in the making of the film, and
 - (b) are reasonable in the opinion of the Secretary of State.

Living expenses therefore fall into two categories for present purposes: those living expenses excluded from the labour costs test; and those included in the labour costs test:-

Living Expenses excluded from the labour costs test: These are living expenses which a person incurs because it is not reasonably practicable for him to reside at his usual place of residence while directly engaged in the making of the film. **These sums must normally be entered in Part 9A, and not in Parts 9 to 12. They are thus excluded from the labour costs test.** (The information given will be used to determine whether the sums are reasonable. It should be noted that a further breakdown of the living expenses may be required. Applicants may choose to supply such information when first making their application.)

Living expenses included in the labour costs test: These are living expenses incurred for any person directly engaged in the making of the film, even though it was reasonably practicable for him to reside at his usual place of residence while so directly engaged. Such living expenses are considered part of labour costs and therefore **they should not be entered in Part 9A.**

WHAT "LIVING EXPENSES" IN GENERAL MAY BE: Living expenses may be hotel bills, rent of flats, location allowances, cost of meals in the field and meal allowances paid under trade union agreements. This applies to all persons - whether qualifying labour or not - directly engaged in making a film (whether on location or not).

TRAVEL COSTS AS LIVING EXPENSES: Transport costs in general, e.g. when the unit goes on location and other costs on travel arrangements, are not covered by labour costs and should not be included in the labour cost test. The only exception relates to such minor travel costs that might be paid from a subsistence allowance: these therefore constitute a living expense. N.B. For the purposes of the production costs test in Part 8 of the form, all transport costs are classified as production expenditure and should be included in the production cost test - see *para 26* above.

N.B. Re: the production costs test. Living expenses - whether included or excluded from the "labour costs test" - should be included in production costs for the purposes of the 70% "production cost test". There is one exception to this: this is for the one or two persons who may be excluded from the labour costs test altogether: the labour costs and living expenses of the same one or two persons are also to be excluded from the "production costs test". (See *para 13(i)* above.)

32. WHEN NOT TO GIVE DETAILS OF LIVING EXPENSES: The Department does not wish to put makers and accountants to undue trouble and expense in extracting details of living expenses for the completion of the Certification Application Form, particularly where the inclusion or non-inclusion of such expenses is not likely to affect the British nature of the film. Therefore where all labour costs are incurred in respect of qualifying persons, there is no requirement to detail living expenses in Part 9A.

THE LABOUR COSTS TEST (see Parts 9 to 12 of the form)

33. The labour cost test is different from the production cost test in that there should be no apportionment between UK activity and non-UK activity. The test rests on whether the person engaged is a national of a qualifying country or is ordinarily resident there.

34. (a) 70% of the total labour cost, after deducting the cost of one person if desired, must have been paid to citizens of or persons ordinarily resident in the EU/EEA or Commonwealth or a country with which the European Community has signed a relevant association agreement (*see attached schedule 1); or

(b) 75% of the total labour cost, after deducting the cost of two persons (one of whom must be an actor/actress and engaged in making the film in no other capacity), must have been paid to citizens of or persons ordinarily resident in the EU/EEA or Commonwealth or a country with which the European Community has signed a relevant association agreement (*see attached schedule 1);

*Schedule 1 lists countries of the European Union, the European Economic Area and countries with which the European Community has signed a relevant association agreement.

Schedule 2 lists Commonwealth countries and details on the Isle of Man and the Channel Islands.

35. It should be noted that applications for films with no non-qualifying labour content need not provide a detailed breakdown of labour costs, and need only include a total figure for labour costs in Part 10 of the form.

36. **Disregarded Costs** In certain circumstances, the Secretary of State may, in ascertaining the labour costs of a film, disregard any sum or part of a sum paid or payable in respect of the labour or services of any particular person. This will be done where the sum in question is so great or small that it does not appear to the Secretary of State to be a bona fide payment for the labour or services in question. Applicants may be asked to provide further information to the Department in relation to unusually large or small fees. In such cases, the disregarded sum will also be disregarded for the purpose of the production activity expenditure test.

37. **Deferred and Contingent Payments/Participations** Where, instead of, or in addition to, initial cash payments, those engaged in the making of the film are remunerated at a later date for their services and/or have the right to participate in the revenues of the film - either by payment directly to the persons concerned, or to someone else who controls their services - the Department will require some valuation to be set upon the sums considered likely to be ultimately payable which should include any deferred and contingent payments. The valuation should be a fair and reasonable estimate of the sums ultimately payable.

Deferred fees should be considered part of actual production costs inasmuch as there is a reasonable probability that such fees will be payable. For clarity, deferred fees generally fall into two types:

- 1) deferrals which must be paid in any event, guaranteed in contracts;
- 2) deferrals where payment is conditional on future receipts of the film.

GUARANTEED DEFERRALS

Before accepting that guaranteed deferrals are part of production costs, auditors should seek proof of the guarantee in supporting documentation, which might include contracts which indicate on whom the burden for making such payments will fall.

CONDITIONAL DEFERRALS & CONTINGENT PAYMENTS/PARTICIPATIONS

Before accepting that conditional deferrals are part of production costs, auditors should seek evidence in supporting documentation, which might include projected sales estimates for the film's future earnings, that there is a reasonable probability that such deferrals will be paid.

We would expect that such conditional deferrals, either in full or in part, would only be included in production costs where, for example, sales estimates for the film's future receipts have concluded that there is a reasonable probability that such deferred fees will be paid, either in full or in part. Although sales estimates can provide some measure of assurance that there will be sufficient income to pay deferred fees, the applicant has final responsibility for exercising appropriate judgement.

If there is not a reasonable probability that such deferrals will be paid, such deferrals should not be considered part of production costs.

The same principles should be applied to contingent payments and participations.

ESTIMATING THE VALUE OF CONDITIONAL DEFERRALS & CONTINGENT PAYMENTS/ PARTICIPATIONS

Therefore the applicant is responsible for estimating a value for conditional deferrals and contingent payments and participations on the basis of the film's projected future earnings. For example, if indications were that a deferral would be paid in full from future receipts, such a deferral would be estimated at 100% of its contracted value.

However, it may be worth noting that frequently, in applications we receive, deferred fees and profit participations are valued at a "zero" value for two main reasons:

1) a film has to have earned considerably more than its production costs before sufficient funds filter through into deferred payments; and

2) at the time a film is completed, the projected sales estimates do not normally forecast such successful earnings, given that the majority of films fail to recoup sufficiently to pay large deferrals.

38. **Residuals** should only be included if they are clearly payments attributable to the making of the film as well as to a person who was directly engaged in making the film. The definition of the residual payment set out in whichever agreement provides for the payment to be made should indicate whether or not this is the case. [As these payments arise once the film has been completed, when and if the film is exhibited in different media, in many cases it will be unlikely that such payments can be attributed to the making of the film.]

LIVING EXPENSES AND LABOUR COSTS

39. i) For an explanation of what living expenses should be included in labour costs, and what living expenses should not, please see the above notes in respect of Part 9A of the form. This

covers:

living expenses which a person incurs because it is not reasonably practicable for him to reside at his usual place of residence while directly engaged in the making of the film;

living expenses which a person incurs, even though it was reasonably practicable for him to reside at his usual place of residence while so directly engaged;

what items of expenditure comprise living expenses;

travel costs as living expenses;

ii) In Part 11 of the form, those living expenses which are counted as part of labour costs must either be entered at 1a, 1b, 2a and 2b, as relevant, or at line 3. Dual entries must not be made. Where living expenses are entered at line 3, the entries should comprise:

i) a total for living expenses paid/payable to qualifying personnel; and

ii) a total for living expenses paid/payable to non-qualifying personnel

with the exception, where relevant, of:

iii) those living expenses paid to one or two persons whose labour costs are being deducted from the overall labour cost and production cost calculations, as set out in Part 9A; and

iv) those living expenses excluded from labour costs, as set out in Part 9A of the form.

40. **National Insurance** Payments made in respect of the employers' contribution to employees' national insurance contributions should be included.

41. **Payroll Taxes etc** Payroll taxes levied in any other overseas country eg the United States of America, in respect of persons indirectly engaged in the making of a film who are remunerated out of funds available abroad, should be included as part of their remuneration for the purposes of the Certification Form. Similarly, any other levies paid in respect of the services of such persons, eg contributions to the benefit funds of the artists' guilds in the United States should also be included.

42. **British Actors' Equity** Entrance fees or subscriptions to Equity paid on behalf of persons directly engaged in the making of the film should be included in labour costs.

43. **Holiday Pay and Holiday Credits** All payments in respect of holiday pay and any credits granted for this purpose should be included in labour costs.

Other persons whose Labour Costs should be included

44. The Act limits the persons who may be taken into account to those employed in directing, producing, acting, technical and industrial capacities, who are engaged in the actual production of a film, and excludes others even though their services may be necessary for the operation of a film making business.

45. INCLUDED: It is correct, therefore, to include such persons as a director, executive producer, actor, actress, editor, scriptwriter, production secretary, continuity clerk, location manager, sound engineer, cameraman, sound mixer, costume supervisor and hairdresser.

46. EXCLUDED: Excluded employees are, for example, clerks and typists (including those on scenario); buyers, cashiers other than those directly engaged on the production and costing, publicity and transport staff employed on the company's administration and office work as distinct from employment on production of the film. Legal and accounting fees may be included where they relate to the making of the film.

47. **Labour Charges made by Studios and Other Organisations** (for labour directly engaged in making the film). If a studio is rented at a charge which includes services and labour, only the amounts, plus any surcharges, actually attributable to the studio labour directly engaged in the making of the film should be included. Charges for other labour and studio services should not be included. The same applies to other organisations such as costumiers.

48. **Commissions** Where any commissions or fees, eg commissions to casting agencies, are paid for obtaining the service of any persons directly engaged in the making of a film, only the amounts of such commissions or fees actually comprising the labour costs of the agency personnel should be included in labour costs for the purposes of certification. The split of such labour costs between qualifying and non-qualifying labour should be made on the basis of the nationality of the agency personnel whose labour costs are included, and not on the basis of the nationality of the actor or other person hired by that agency.

49. It is also permissible to include a reasonable proportion of amounts paid or payable to stills photographers and similar employees, who are partly employed on work directly connected with the making of a film. For example the Department are advised that in the case of a stills cameraman (who is engaged on work connected with publicity) not more than 25% of his salary should be taken into account. For acceptable studio charges, see *para 47* above.

50. Labour costs of persons directly engaged in all processing and titling should be included. Where the exact amounts cannot be ascertained, the Department will accept an entry representing 40% of the balance remaining of the total invoice charges after the deduction of the costs of film stock and other material and VAT. Where estimates of labour costs based on invoices charged are adopted, care should be taken to ensure that all processing and titling costs pertaining to the production of the film are accounted for.

51. Other types of employment not mentioned in these notes will be considered in the light of the nature of the work and the 1985 Film Act's definition of labour.

RESIDENCE

52. The main characteristics of ordinary residence are set out in schedule 3 to these guidance notes. The question as to whether or not a person is ordinarily resident in the United Kingdom is one of fact and a final decision can only be given by the United Kingdom Courts. The Department takes account of decisions taken by the Inland Revenue or relevant foreign tax authorities in order to determine whether a person is ordinarily resident in a country of the EU/EEA, etc., or in the Commonwealth. It may be possible in some circumstances to obtain written confirmation of residency status from HM Inspector of Taxes or the relevant foreign tax authorities. Such written confirmation forwarded with the Certification Form, when a claim of an individual to be "ordinarily resident for taxation purposes" is made, would normally be acceptable to the Department.

AUDITORS REPORT (see Part 13 of the certification application form)

53. The Films (Certification) Regulations 1985, as amended, require a Report to the Secretary of State verifying the particulars of the salaries, wages and payments prepared by an accountant who is:

a) a member of a body of accountants recognised under section 25 of the Companies Act 1989:

Institute of Chartered Accountants in England and Wales
The Institute of Chartered Accountants in Scotland
The Chartered Association of Certified Accountants
The Institute of Chartered Accountants in Ireland

or;

b) a person recognised under section 34 of that Act to be appointed as Auditor of a Company

who, in either case, is not and was not at any time while the film was being made, a partner of, nor in the employment of, the maker of the film, or where the maker of the film is a company, is not, and was not at any time while the film was being made:

an officer or servant of that Company, or, if that Company is a member of a group of companies, of any Company in that group; or

a partner of, or in the employment of, any such officer or servant.

In the same way, the UK accountant should be independent of any acquirer of the film.

54. The auditors' report should include the following wording:

'ACCOUNTANTS' REPORT TO THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT ON THE PRODUCTION AND LABOUR COSTS OF THE FILM 'X'

I/We have examined the books of the maker of the film referred to in the application dated xxxxxx in so far as they relate to the making of the film.

The applicant is responsible for the preparation of the application. It is my/our responsibility to form an independent opinion, based on my/our examination, on those parts of the application referred to below and to report my/our opinion to you.

Basis of opinion I/We have received all the information and documents necessary to enable me/us to ascertain the amount of production expenditure and the labour costs (as defined in paragraphs 4 and 6 respectively, of Schedule 1 to the Films Act 1985) of the film. This includes a proper and reasonable proportion of any annual salaries and fees to be attributed directly to the making of the film, and the allocation of these, in accordance with the requirement of paragraphs 4 and 7 of that Schedule regarding a film to be certified as a British film. My/Our work included examining, on a test basis, evidence relating to the amounts in the application and an assessment of the significant estimates and judgements, made by the applicant in preparation of the application.

On the basis of such examination, I/we report that in my/our opinion, not less than:

- i) 70% of the production expenditure incurred in the production of the film was incurred on film production activity carried out in the United Kingdom; and
 - ii) *either*
 - (a) 70% of the total labour cost remaining [after deducting the cost of one person from the total labour cost - *delete as applicable*] represents payments paid or payable in respect of the labour of citizens of or persons ordinarily resident in the Commonwealth, a member State or a country with which the European Community has signed an association agreement;
- or
- (b) 75% of the total labour cost, remaining after deducting the cost of two persons from the total labour cost, at least one of whom was engaged as an actor or actress and in no other capacity, represents payments paid or payable in respect of the labour of citizens of or persons ordinarily resident in the Commonwealth, a member State or a country with which the European Community has signed an association agreement.'

In addition, if the application is for parts of a series to be treated as individual films in their own right, each to qualify under its own merits, a single accountants' report may be made out, but it must demonstrate that each episode has been audited individually and qualifies on its own merits under the production expenditure and labour cost requirements. The accountants' report should contain additional wording to that effect, and the following wording is suggested:

"We confirm that the information contained in the application applies to each episode individually and we confirm that each episode has been audited individually and qualifies on its own merits under both the production expenditure and labour cost requirements."

The accountants' report should also state the title of the series and to which episodes of the series the report applies.

The report should not be dated before the date of the application, as it is a report on the application.

55. The auditors' report should be addressed to:

The Secretary of State for Culture, Media & Sport
Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

The report should however be posted together with the application form to:

Creative Industries Division (Films branch),
Department for Culture, Media & Sport,
2-4 Cockspur Street,
London SW1Y 5DH.

56. Exchange Rates All applications should be submitted with costs in sterling. Commercial accounting rules (see Statement of Standard Accounting Practice 20) provide guidance on how to deal with foreign currency transactions in various situations for the purpose of drawing up financial statements in sterling. These rules should also be followed for the purpose of applying for qualifying status. Conversely if accounts are drawn up in a foreign currency, no objection will be made to a translation into sterling using the exchange rate prevailing on the date of application for qualifying status.

57. STATUTORY DECLARATION (see Part 14 of the certification application form)
The statutory declaration should be made on the application form at Part 14. This is required under section 2(4) of Schedule 1 to the Films Act 1985 and under Regulation 5(a) of the Films (Certification) Regulations 1985, as amended, for the purposes of section 68 of the Capital Allowances Act 1990, as amended, and section 43 of the Finance (No.2) Act 1992 and section 48 of the Finance (No.2) Act 1997 in the case of British Films.

IMPORTANT - Where any additional sheets are submitted as an addendum to the application:

a) mention of the addendum should be made in the appropriate place on the application form;

b) each page of any addendum should be signed by the same person making the application, and signed and stamped by the person (eg solicitor) administering the oath to show that the addendum formed part of the application when the statutory declaration was made.

58. Application procedure Copies of the Certification Application Form, which includes the form of the Statutory Declaration which must accompany it, may be obtained from DCMS. contact:

chantel.burrell@culture.gov.uk (Tel: 020 7211 6436); or
charlotte.eley@culture.gov.uk (Tel: 020 7211 6476); or
fax: 020 7211 6417; or write to:

Film certification officer
Creative Industries Division,
Department for Culture, Media and Sport,
4th Floor,
2-4 Cockspur Street,
London,
SW1Y 5DH

and applications when completed should be returned to that address.

59. Other Certificates of Nationality British films exported to other member States of the European Union and European Economic Area may require a certification of nationality. A note outlining the requirements for the issue of such a certificate is available from Creative Industries Division (Films branch) at the address at *para 55*.

THESE NOTES SHOULD NOT BE TAKEN AS AN AUTHORITATIVE STATEMENT OF THE LAW AND LEGAL ADVICE SHOULD BE SOUGHT IF THERE IS DOUBT AS TO THE APPLICATION OF THE ACT IN PARTICULAR CIRCUMSTANCES.

EUROPEAN UNION

Austria
Belgium
Denmark
Finland
France
Germany
Greece
Ireland

Italy

Luxembourg
Netherlands
Portugal
Spain
Sweden
United Kingdom

EUROPEAN ECONOMIC AREA

contains the following three countries from the European Free Trade Area (EFTA) in addition to the countries of the EU:

Iceland
Liechtenstein
Norway

(Switzerland, while being the fourth member of EFTA is not a Party to the EEA, having voted against membership in December 1992.)

COUNTRIES WITH ASSOCIATION AGREEMENTS

Bulgaria
Czech Republic
Estonia
Hungary
Latvia
Lithuania
Poland
Romania
Slovakia

The Isle of Man and the Channel Islands are not part of the UK or part of the EU/EEA for treaty purposes. They are part of the Commonwealth. (NB See Schedule 2 for notes on citizenship.)

COMMONWEALTH

Schedule 2

1. Anguilla
2. Antigua and Barbuda
3. Ascension Island (part of St Helena Dependencies -see 48)
4. Australia
5. Bangladesh
6. The Bahamas
7. Barbados
8. Belize
9. Bermuda
10. Botswana
11. British Antarctic Territory
13. British Indian Ocean Territory
14. British Virgin Islands
15. Brunei
16. Cameroon
16. Canada
17. Cayman Islands
18. Cyprus
19. Dominica
20. Falkland Islands (see also 21)
21. Falkland Islands & Dependencies
22. Fiji
22. The Gambia
23. Ghana
24. Gibraltar
25. Grenada
26. Guyana
27. India
28. Jamaica
29. Kenya
30. Kiribati
31. Lesotho
32. Malawi
33. Malaysia
34. Maldives
35. Malta
36. Mauritius
37. Montserrat
38. Mozambique
39. Namibia
40. Nauru
41. New Zealand
42. Nigeria
43. Pakistan
44. Pitcairn, Henderson, Ducie and Oeno
45. Papua New Guinea
46. Saint Christopher and Nevis
47. Saint Lucia
48. Saint Vincent and the Grenadines
49. Seychelles
50. Sierra Leone
52. Singapore
53. Solomon Islands
54. South Africa
55. South Georgia and South Sandwich Islands (part of Falkland Islands and Dependencies - see 21)
56. Sri Lanka
57. St Helena (part of St Helena Dependencies -see 58)
58. St Helena Dependencies
59. Swaziland
60. Tanzania
61. Trinidad and Tobago
62. Tristan Da Cunha (part of St Helena Dependencies -see 58)
63. Tonga
64. Turks and Caicos Islands
65. Tuvalu
66. Uganda
67. Vanatu
68. Western Samoa
69. Zambia
70. Zimbabwe

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Isle of Man and the Channel Islands

Nationals Isle of Man citizens and citizens of the Channel Islands are British citizens and therefore citizens of the EU.

Residents IoM and Channel Island residents are not UK/EU residents but they are

Commonwealth residents.

Hong Kong Prior to 1 April 1997 most people in Hong Kong were British Dependent Territories citizens. On 1 April 1997, this category of citizenship disappeared and most people in Hong Kong became Chinese citizens.

Some retained British citizenship by qualifying by some other means or becoming British (National) Overseas or British Overseas Citizens. It may therefore be worth checking if filming in Hong Kong is involved.

Hong Kong is not part of the Commonwealth and its citizens are therefore not Commonwealth citizens (unless as one of the categories outlined in the paragraph above) or Commonwealth residents.

Dual Nationality

In cases of dual nationality, the maker is free to choose which country's nationality should be assigned to the person concerned on condition that the nationality chosen can clearly be demonstrated.

Ordinary residence has the following characteristics:

It is a regular habitual mode of life in a particular place ;
Its continuity has persisted despite temporary absences;
It may be of long or short duration;
It must be lawful;
It must have been adopted voluntarily;
It must be for a settled purpose.