



**April 2006**  
**GUIDANCE NOTES ON THE EC CERTIFICATE OF NATIONALITY**

**BACKGROUND: WHAT IS THE "EC CERTIFICATE OF NATIONALITY" FOR?**

These certificates are issued under a provision of the 1963 EC Films Directive (63/607/EEC) which, for the recognition of the nationality of films from EC member States, laid down uniform criteria. This is useful for film distribution purposes.

Some EC countries, for example Italy and Spain, may have quotas on the number of non-EC films exhibited in their countries. Therefore exporters and importers of British films may ask for a Certificate of Nationality to evidence that the film is indeed a British film (rather than, say, an American film) in order to qualify for the benefit of any screen quota in such countries.

The EC certificate of nationality is of no use for purposes of UK tax reliefs for film.

**DOESN'T THE EU WEB-SITE LIST THE 1963 DIRECTIVE AS 'NO LONGER IN FORCE'?**

This is not a problem – certificates continue to be issued. To explain: in 1964 (64/242) the European Commission adopted a recommendation (on the format of the EC Certificate of Nationality) that included the definitions laid down in the 1963 Directive and is still applicable. Therefore DCMS continue to issue the certificates to support the free movement of British films in the EC. (In any event, any attempted restrictions to the showing of films would fall under the general EU Treaty rules - free movement of goods/services - and could therefore be questioned on this ground.)

Texts relevant to Certificates of Nationality are available via this web-site:  
[http://europa.eu.int/eur-lex/en/search/search\\_lif.html](http://europa.eu.int/eur-lex/en/search/search_lif.html)

Searching in this site by year and document number enables access to the following relevant documents:

1. Year 1963, document number 607. Dated 15 October 1963 this Directive implements, in respect of the film industry, the provisions of the EC General Programme for the abolition of restrictions on freedom to provide services. It sets out the qualifying criteria for Certificates of Nationality.
2. Year 1964, document number 242. Dated 8 April 1964, this is a recommendation to the member States on the format of Certificates of Nationality. (Spanish version only)
3. Year 1965, document number 264. Dated 13 May 1965 this Directive implements, in respect of the film industry, the provisions of the EC General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services.

## WHO CAN APPLY FOR A CERTIFICATE AND WHEN?

Applications may be made by nationals and companies of European Economic Area (EEA) member States (in accordance with Article 1 of the 1963 Directive). The application does not have to be made by the production company.

The UK is a member State and the UK consists only of England, Wales, Scotland and Northern Ireland. The Isle of Man is not part of the UK or any other member State.

Applications may only be made for a completed film, in accordance with Article 2, and so applications should not be submitted before a film is finished.

Applicants should submit the application form with a covering letter stating how many certificates are needed and the address that the certificates should be sent to.

## CRITERIA: WHAT ARE THE TWO WAYS OF QUALIFYING FOR THIS CERTIFICATE?:

There are two ways:

- under the Article 3 rules for straightforwardly 'national' films; and
- under the Article 4 rules for official international co-production films.

## WHAT ARE THE ARTICLE 3 RULES FOR NATIONAL FILMS?

Criteria for eligible films are summarized as follows:

### 1) who makes the film:

- i) the persons or company producing the film must be a national or company of an EEA member State. (The UK is an EEA member State; the UK consists only of England, Wales, Scotland and Northern Ireland.)
- ii) The address given for the production company should be the address of its principal place of business, rather than the address of its registered office (if different).

### 2) language in which the original version of the film is recorded:

- i) the *original recording* of the film should be in one of the languages of the UK. DCMS's approach is that this should be one of the UK's officially recognised languages, and DCMS makes reference to the English language and to the UK's six recognized languages under the Council of Europe's Charter for Regional or Minority Languages (Welsh, Scottish-Gaelic, Irish, Scots, Ulster Scots and Cornish).
- ii) If the film is *originally recorded in more than one version in more than one language*, at least one of those versions must fulfil the above language requirement.
- iii) If the screenplay requires *parts of the dialogue* to be recorded in another language, that is not a problem.

3) where the filming is done:

- i) any or all of the outdoor (ie location) scenes may be filmed anywhere in the world.
- ii) Normally all studio filming must take place in studios situated in EC territory: and no studio filming outside EC territory. An exception may be made where any outdoor scenes are filmed in a third country (non-EC territory): up to 30% of all the studio scenes can also be shot in that country (and at least 70% of all the studio scenes must be shot in EC territory). DCMS requires that percentage to be measured in terms of the screen time accorded to studio scenes in the completed film. The percentage of EC-studio and non-EC-studio time should be stated on the application form in the box marked "studio". If all studio scenes were filmed in the UK, for example, the applicant could state "all studio in UK 100%"
- iii) If there was no studio filming, you should add 'no studio filming' or 'shot entirely on location': this adds clarity when we assess the application. There is no need to enter details of the location of any post-production facilities unless they are undertaking work which might be considered as shooting.
- iv) If there is no location filming outside EC territory, the use of studio filming outside EC territory would disqualify an application. (See ii above.) This also means that, for example, the use of an animation studio outside EC territory for a film that is entirely animated (having no location filming at all) would disqualify an application.

3) individuals taking part in the making of the film:

- i) British persons includes persons who come within the cultural domain of the United Kingdom for purposes of the EC certificate of nationality. DCMS regards both nationals *and ordinary residents* of the UK as coming within the cultural domain of the UK.
- ii) Here are the alternative formulas based on employment of various persons in specific categories on a film:
  - a) where the film director is a British or EC national\* and all persons in categories 1 and 2 (writers and composers) are British or EC nationals: a simple majority of persons employed in categories 3-9 (below) must also be British or EC nationals; or
  - b) where the film director is a British or EC national but not all persons in categories 1 and 2 (writers and composers) are British or EC nationals: third country nationals must not comprise more than two-fifths (40%) of persons employed in all the categories 1-9; or
  - c) where the director is a non-British and non-EC national: all persons in categories 1 and 2 (writers and composers) must be British or EC nationals; and non-British and non-EC nationals must not comprise more than one-fifth (20%) of persons employed in categories 3-9.

\* Nationals from three of the countries which are party to the European Free Trade Agreement (EFTA), ie Iceland, Norway and Liechtenstein, must be granted equivalent status as nationals from EC member States with regard to the provisions of the Directive. This relates to the fact that there is provision for non-discrimination on the grounds of

nationality under the European Economic Agreement which came into force in the UK on 1 January 1994 and extended the provision of the EC's single market to the five EFTA states.

iii) the 9 categories mentioned above are as follows (*with notes on the DCMS's interpretation for acceptable entries in applications*):

- (1) writer(s) of the scenario (*in particular the story*), adaption (*if it is adapted from another genre, eg a book or a stage play*) and dialogue (*for the screenplay*)\*
- (2) composer(s) of music specially written for the film
- (3) principal players\*
- (4) executive producer\*
- (5) director of photography
- (6) sound engineer\*
- (7) editor\*
- (8) art director\*
- (9) wardrobe chief\*

#### \*NOTES FOLLOWING THE SAME NUMBERING

(1. Writers:

i) If it is not an "adaption" (eg if it is a script adapted from a novel or a stage play) then put N/A in this box.

ii) A scriptwriter will be determined by taking into account factors including: creative input on the script and time spent working on the script, the person who takes the credit in the film. For example, if the film director has performed writing services on the script, he counts as another writer. If he has not performed writing services, he does not: script editing services would not count as script-writing for example; changes to the script made in rehearsal or "on the floor" by director and actors, etc., also would not normally count as script-writing.

(3) Principal players are identified on a common sense basis. If there are fewer than 6 principal roles, 'n/a' should be entered in the boxes that are left-over. If there are more than 6 principal roles, an extra sheet should be attached. There is not a single definition of "principal" cast in either the guidance notes for the Nationality certificate or The Council Directive. However, factors to consider are: the number of days worked in front of the camera and the centrality of the actor's role in the film. Taking such factors into account, the producer should know who the principal actors are.

(4) DCMS takes this to refer to the producer-type person who day-to-day is in most direct charge of physical production, and in the UK this often translates best as the line producer.

(6) DCMS takes "sound engineer" to refer to the most senior person in the sound dept.

(7) "Editor" refers to the film editor.

(8) DCMS considers that "art director" is best understood as the production designer.

(9) DCMS considers that "wardrobe chief" is best understood as the costume designer.

## WHAT ARE THE ARTICLE 4 RULES FOR CO-PRODUCTION FILMS?

UK producers involved in official international co-production films should note. Films co-produced under the terms of official co-production agreements by co-producers from member States are eligible for EC certificates of nationality without fulfilling all of the Article 3 criteria set out above, ***on condition that the artistic and technical contribution of the member State or States in question was not less than 30%***. As a measure of this on an official co-production, DCMS takes into account whether expenditure on UK/EU goods and services taken together was at least 30% of production costs in the DCMS final co-production analysis.

Such certificates may be issued by DCMS on request any time after the film has received final co-production status from DCMS. In that event, there is no need for applicants to complete the usual two-page certificate of nationality application form: a simple written request for a certificate of nationality in respect of the official co-production film would suffice. Alternatively, if an applicant prefers, an application for a certificate of nationality for a co-production film may be made on the usual two-page form any time after the film is finished.

There is a clause in Article 4 for approval of films made by producers from member States *in co-operation* with producers from third countries *in conformity with national laws*. In the absence of national laws in the UK for such an approval, that clause is not operable in the UK.

## TELEVISION PROGRAMMES AND ANIMATION FILMS

In the case of television programmes and animation films, to satisfy that the criteria have been met, we will still require the fullest possible details to be entered on the Technical Details page of the application form. For instance in the case of documentaries or animation, for 'Actors', a narrator or voice-over artists may be entered, or, for Director of Photography you may put someone who supervised the filming or the taking of the photographs or similar role.

Generally where possible, something should be put on the form. If one person performed more than one of the roles listed on the form, the same name may be entered on each occasion.

If no-one fulfilled certain roles, for example, say, 'Chief of Wardrobe', please write 'no personnel for this category' in the appropriate box. This may avoid questions being raised in the countries to which your technical details will be sent, and should speed up the process of exporting the film.

The 1963 Directive was intended for 'cinematographic' works (see Article 2) and DCMS does not encourage its use for non-cinema works but is aware that sometimes it is so used.

## STATUTORY DECLARATION

The statutory declaration, on the first page of the form, may be made either before a practising solicitor, general notary, justice of the peace or other officer authorised by law to administer a statutory declaration under the Statutory Declaration Act 1835. He/she should be independent of the production and from anyone with a financial interest in the film. It is an offence knowingly and willingly to make a materially false statement in a statutory declaration.

A person making a false statutory declaration is liable on conviction to imprisonment for a maximum of two years (where conviction follows a trial on indictment), or a fine or both.

If the applicant wishes to make the statutory declaration while outside the United Kingdom, it should not be assumed that anyone they go to is authorised under the Statutory Declaration Act 1835 bearing in mind that this is a piece of British legislation. Applicants should make sure that their declaration will be valid. The British consul is authorised to administer a statutory declaration for this purpose.

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 (e.g. solicitor) administering the statutory declaration to show that the addendum formed part of the application when the statutory declaration was made.

Once the statutory declaration has been made the application form cannot be altered without making another statutory declaration to cover the amendments. Therefore, where an applicant has any doubts about whether all of the form has been entered correctly, he may wish to seek independent legal advice or to submit the form to DCMS in draft for DCMS to check before the statutory declaration is made.

The original signed statutory declaration must be submitted (copies are not accepted).

#### **WHAT IF WE NEED MORE THAN ONE CERTIFICATE?**

You only need to complete one application form. If you require more than one certificate for a film, for your distributors for example, you only need to complete one application form. When you submit an application, simply state on a covering letter how many original certificates you need us to supply. DCMS may also, on receipt of a written request, produce further original certificates of nationality in the future for the same film without any need to complete the application form again.

#### **CAN WE APPLY FOR A 'CERTIFICATE OF ORIGIN'?**

A 'certificate of origin' is not issued by DCMS but may be issued by the Chambers of Commerce.

#### **APPLICATION FORMS**

Application forms may be obtained online at:

[http://www.culture.gov.uk/creative\\_industries/film/EC-certificatesofnationality.htm](http://www.culture.gov.uk/creative_industries/film/EC-certificatesofnationality.htm)

#### **QUERIES**

Queries may be sent to:

fax: 020 7211 6417; or tel: 020 7211 6436 or 6476;

e-mail: [filmcertification@culture.gsi.gov.uk](mailto:filmcertification@culture.gsi.gov.uk)

or write to:

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

**Creative Industries Division (Films)**