



Cultural test for British films: Final Framework

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1. Context

In July 2005 the DCMS published its proposals for a new cultural test for British Films. The aim of the test is to better identify culturally British films that might be considered eligible for the new tax relief. The test aims to offer better targeted support for culturally British films, and increased certainty for applicants.

It is not the Department's intention to dictate the content, or style, of the films producers make. The test will award points for many different elements that contribute to the overall cultural value of a film – including the use of UK cultural hubs and practitioners as well as content.

The proposals for the cultural test have been the subject of a 12 week consultation period, during which time consultation meetings have been held. The Department received 39 written responses and a summary of these is attached at annex A. This summary will also be published on the DCMS website www.culture.gov.uk

The consultation responses were almost unanimous in their call for clarity on the new system. In response to this we are today publishing the framework for the test of a culturally British film. This test will be supported by guidelines, which the Department intends to develop with industry input. These guidelines will explain in more detail how the test will operate.

2. Amendments to the proposed Cultural Test

Taking into account the comments received during the consultation period the Department has decided to make the following revisions to the proposed test.

Section A – Cultural Content

- Reduce the weighting points for the location of the setting of the film
- Reduce the overall weighting of section A

Section B – Cultural Hubs

- Remove the point allocated to a pre-production office
- Increase points available for use of UK shooting (studio and/or location)
- Split visual effects from special effects, and increase the points available to the former
- Increase the points available to music recording
- Remove the "other post production" category and add separate categories for audio post production and film laboratory
- Increase the overall weighting of Section B

Section C – Cultural Practitioners

- Add a category for Producer
- Share points for actors between principal cast and the overall balance of the cast
- Share the points for technical and craft between an expanded group of key personnel and the balance of crew

Other

- Set the pass mark at 50% of the marks available, i.e. 16/32
- Include alternative options for animation and documentaries, to be developed with experts from these sectors

In addition:

It is this Department's intention that films will be pre-certified under the new cultural test, subject to the conclusions of a full regulatory impact assessment.

3. How the new test will be implemented.

It is the Department's intention to implement the new cultural test for British Films through:

- (a) The revision of Schedule 1 to the Films Act 1985. The Act will be revised to include the new cultural test and to remove the existing expenditure and labour costs tests. The maker test and the pre-existing footage test will remain the same.
- (b) Films which satisfy the requirements of the co-production treaties will continue to be treated as British films; but it is our intention that the new cultural test will be applied to co-productions through all the UK's bi-lateral treaties and/or their guidelines. Points will be awarded to co-production elements from both the UK and the co-producing state i.e. references to the UK and British in the test will include references to the co-producing state and nationals [or residents] of that state.
- (c) The UK government has notified the proposed new tax relief, and National Lottery grant schemes for film, to the European Commission under the State Aid rules. The cultural test will be subject to comment and possible amendment as a result of this.

4. The Cultural Test for British Films

A film qualifies if it scores 16 points or more out of 32.

The Secretary of State will not have any discretion to waive or relax the test in a particular case.

	Notes	Points
Section A: Cultural Content		
A1	Set wholly/mainly in the UK	1
A2	Principal characters British nationals or residents	1
A3	Based on British subject matter or underlying material	1
A4	Dialogue in the English Language (inc official regional or minority languages of the UK)	1
Total		4
Section B: Cultural Hubs		
	Must be in the UK	
B1	Studio and/or location shooting	6
B2	Visual effects	4
B3	Special effects	1
B4	Music recording	2
B5	Audio post production	1
B6	Laboratory processing	1
Total		15
Section C: Cultural Practitioners		
	Must be British or EEA nationals/residents	
C1	Director	2
C2	Scriptwriter	2
C3	Producer	1
C4	Composer	1
C5	Principal actors	2
C6	Majority of cast	1
C7	Key Staff (cinematographer, production designer, costume designer, editor, sound designer, VFX supervisor, principal make up/ hair)	3
C8	Majority of crew	1
Total		13
Total points for Sections A, B, C		32

5. Next Steps

Now the framework of the cultural test is clear, we will be drafting guidelines to the test. With the help of the industry we will ensure that the accompanying guidelines to the cultural test are as transparent as possible and offer certainty to filmmakers. Our aim is that the guidelines are published as soon as possible.

Guidelines will give clarity on how points will be awarded for certain categories. These guidelines will be available in good time before the new cultural test comes into operation. The guidelines will include grading systems to award points on a pro rata basis where more than 1 point is available, and set the level of activity required in the UK to score single points, with advice on how to measure this.

Animation and documentary films are important elements in the British Film industry. To ensure that such films are not excluded by the test, the Department is working with industry experts in animation and documentary films in order to find the right solutions here. In some cases special categories will need to be developed.

If you would like to be further involved in the development of the guidelines please contact:

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Annex A

Cultural Test for British Films: Consultation – Summary of responses.

General response to the consultation

Overall, the responses to the consultation supported the new Cultural Test (CT). Some respondents noted that films with a recognisable UK connection have proved attractive to audiences, however it was felt to be important that inward investment films should also be supported if they are UK made.

The most common message received through the consultation was that the test should provide clarity and certainty for producers. Many respondents felt that to do this it would be necessary to operate a system of pre-certification for the test. Some felt there should also be set time periods for the issuing of qualifying certificates.

Respondents also asked for clarification of how the new CT will apply to co-production treaties.

General response to the Cultural test

General responses to the CT were positive. The need for certainty came through strongly with most respondents asking for as little discretion as possible to be left to the competent authority. On the other hand, some respondents felt that discretion ought to be exercised in cases where a film is thought to be of significant importance to the UK, yet misses the pass mark for the CT.

Whilst the need for objectivity was recognised, some respondents asked that the quality of films be considered through the CT.

Respondents also raised caution about the possible exclusion of films which are entirely British in terms of content and practitioners but which are filmed in another country. The argument was also made that the UK should not only reward producers for making films in the UK but also support UK film producers wanting to make their work abroad.

Section A

Comments under categories for Cultural Content

Some helpful comments were offered about the categories under Section A. The main points were about the clarification of language to ensure objectivity – ie. 'wholly/mainly', 'resident' and 'official minority languages'. A common question occurred about films where the location and the nationality of characters are non-specific for example in animation and science fiction films. It was also suggested that the test be made flexible enough to accommodate different film genres. The storywriter category also attracted some interest – Some respondents thought that the 'originality' of a story can be hard to track and that the nationality of the story writer is not relevant, they felt it is more important that the subject matter is British.

Some respondents felt that section A would not work for animation and documentary films and that categories would need to be amended for these films. Points for filming in English were largely supported, however clarification was sought on what other minority or regional languages would be applicable.

Other arguments raised included:

- Points under principal characters should also include film crew.
- 'Set in UK' could be measured by the number pages of script- ensuring that the script is written in 12pt, courier font and double spaced.
- Consider adding 'issues of particular relevance to a UK audience'.

Should the weighting points for the location of the film be graded?

Respondents supported a grading system to incentivise the use of UK locations. One suggestion was to award 2 points for more than 50% set in the UK and 1 point for more than 25%. Respondents favoured taking a point from 'set wholly/mainly in UK' and reallocating it to 'location shooting' as this was thought to offer a similar incentive.

Section B

Comments under categories for Cultural Hubs.

This section attracted the most interest and the general view was that more points should be awarded to Cultural Hubs, in particular under the categories of postproduction and visual effects. It was felt that these categories are areas in which the UK is particularly skilled and therefore there is a need to support these facilities and their workforce to enable businesses to thrive. Some respondents suggested that there should be an incentive for producers to use a range of facilities in order to prevent 'cherry picking'.

Some respondents felt that as visual effects is one of the biggest below the line spends for large budget films, and are also used by a large proportion of small budget films-this should be reflected by a greater allocation of points in this category.

Other specific points raised were:

- Cultural hubs points could be restricted if awarded to a co-producing state, as this would not incentivise use of UK facilities.
- Consider adding: Set design and Construction and Ownership of IPR.
- Section B would need to be amended to account for the specific needs for animation and documentaries.

Should the weighting points for the use of studios and visual effects facilities be graded?

Most respondents felt that studio shooting and location shooting should be awarded the same points to support both small and large budget films. By awarding points for location shooting, employment across the UK would be also supported. A grading system for location and studio shooting was also encouraged, to allow for some unavoidable shooting in foreign locations and studios.

Many respondents felt that the point for the pre-production office should be removed as it would be difficult to evidence.

Respondents recommended that visual effects should be awarded from 1 to 5 points. Special effects, covering pyrotechnic/physical effects was thought to need a separate category. The majority of respondents supported the priority given to visual effects in this section, however some felt that the allocation of points across Section B should be more evenly distributed.

A grading system was proposed by a number of respondents for categories throughout the test. Respondents felt that minimum points should be awarded for more than 10% activity under a particular category and maximum points for more than 50% activity in a particular category. This system would allow points to be received at a low budget level of film production and is thought to be unlikely to attract abuse.

Section C

Comments under the categories for Cultural Practitioners

The responses from this section were unanimous in the opinion that further categories should be added to recognise all individuals involved in a film, including the Producer. It was pointed out that a number of key film making roles often come from outside of the UK/EEA, yet they still provide work for the range of other roles involved in the production and based in the UK. For this reason it was recommended that points should be awarded for all film making roles, so as not to drive away inward investment bringing in lead roles from abroad. Some respondents suggested that a labour cost test would ensure a fairer allocation of points across all practitioners involved in the film making process.

Specific film making roles which were suggested could be recognised include:

- Research and Development
- Line producers, developing and individual producers.
- Sound designer
- Production accountant

How can principal actors be easily identified?

It was suggested that principal actors could be defined by the number of days the actor works in the schedule.

General

Should there be other elements of film production in the test?

Respondents sought clarification on whether Commonwealth countries and countries with association agreements with the EU will be included under the cultural test.

Should categories be varied for animation or documentaries?

It has been argued that the cultural test (as drafted) does not fit well with animation or documentary films and would therefore require either a separate test for different film genres or broader categories. Issues that arise include: non-specific location, nationality of characters unknown, no location shooting, different film making process and expertise used.

Comments on weighting of sections and pass marks.

A clear majority of respondents who commented on the pass mark thought that it should be set at no more than 50% of the total points available.

View on the suggested weighting of sections varied, from 2-5 in Section A, 6-15 in Section B and 6-11 in Section C, but the overall consensus was that Section B should have the highest number of points allocated to it.

Comments on what the guidance to the test should cover.

Respondents felt that detailed guidance would be needed to support the test, respondents asked that this guidance be flexible to accommodate the evolving industry. The industry have offered their help in developing the guidance. Clear definition of terms is needed within the guidance, and examples to illustrate how different cases would be handled.

Comments on the likely overall impact of the proposed test.

There was some concern about how the test would be applied to co-productions.

Other comments.

Respondents agreed that the test should be as objective as possible but that pre-certification would offer film makers the certainty they need to be able to access finance and begin making their films.

Workshops and seminars were also recommended in order to educate filmmakers about how the cultural test will apply.



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