**EXPLANATORY MEMORANDUM TO**

**THE CULTURAL TEST (PROGRAMMES AND VIDEO GAMES)**

**REGULATIONS 2013 [Year] No. [XXXX]**

**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 These Regulations introduce points-based tests for television programmes (which may be a drama, documentary or animation) and video games in connection with qualification for tax relief for television production or video games development. The purpose of the tests is to allow the Secretary of State to assess whether the attributes of a television programme or video game (such as its content, where it was made and the persons involved in its production or development) are sufficiently culturally British or European in order to qualify for the reliefs. These Regulations also set out the information and evidence that applicants must provide in relation to these cultural tests.

**3. Matters of special interest to the Select Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The Finance Act 2013 introduced into the Corporation Tax Act 2009 new tax reliefs for television programmes and video games (see Parts 15A and 15B of the 2009 Act). One of the requirements that must be satisfied in order to qualify for the reliefs is that the television programme or the video game must be certified by the Secretary of State as a ‘British’ programme or a video game in accordance with conditions specified by the Secretary of State in regulations. These Regulations set out the conditions that must be satisfied in order that the Secretary of State may certify a programme or a video game as ‘British’.

4.2 In addition, the provisions introduced into the Corporation Tax Act 2009 by the Finance Act 2013 allow the Secretary of State to make regulations setting out the information and the evidence required in connection with an application for certification as a ‘British’ programme or video game. These Regulations also include regulations made under these provisions. The Department expects to make the Regulations once the Finance Bill has Royal Assent and for the Regulations to come into force at the earliest possible opportunity thereafter.

4.3. As the tax reliefs for television programmes and video games are new reliefs, this is the first time that these regulation-making powers have been used.

**5. Territorial Extent and Application**

5.1This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

6.1As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

7.1 As with the existing corporation tax relief for film production, the new creative sector reliefs for television programmes and video games require State aid approval from the European Commission. Article 107 of the Treaty on the Functioning of the European Union prohibits Member States from providing aid, such as tax relief, to selected industries or businesses if such aid has the potential to distort competition and affect trade between Member States. There is an exemption, however, for aid to promote culture. The European Commission may approve such aid if such aid does not affect trading conditions and competition in the European Union to an extent that is contrary to the common interest.

7.2 The Department has received approval from the European Commission that the cultural tests for television programmes set out in these Regulations provide verifiable national criteria to identify culturally British productions. The Department is currently seeking similar approval for video games. A television programme or a video game will have to pass the relevant cultural test in order to be certified as a British programme or video game for the purpose of the tax relief.

7.3 The cultural tests award points in four sections: in relation to the British or European content of the programme or video game; the cultural contribution of the programme or video game; the extent to which the programme or video game was developed in the United Kingdom; and the extent the programme or video game was made by nationals or residents of the European Economic Area.

7.3. The cultural tests do not stipulate content, location of production, or selection of practitioners, but the tests do ask for a reasonable amount of production activity to take place in the UK in order for a drama, documentary, or animation programme, or a video game to qualify as ‘British’.

**8.** **Consultation Outcomes**

8.1 The Department worked with stakeholders – through sector based working groups - to design separate cultural tests for television programmes and video games in line with the European Commission’s rules on State aid. The Department subsequently issued consultation papers on the proposed cultural tests on 1 October 2012 and invited responses by 29 October 2012. The Department considers that the consultation period was sufficient because the Department has good existing links and working relationships with those, such as television producers and video games developers, who are likely to be most affected by the policy. A total of 41 responses were received. All respondents were broadly supportive of the cultural tests, but adjustments were made post-consultation to the terminology used in the cultural tests and the distribution of points in Section A of the tests (in relation to British or European content). A draft of these regulations was published alongside the draft primary legislation on 11 December 2012, with the consultation period on the draft legislation closing on 6 February 2013. As a result of this consultation, further improvements were made to the terminology used in respect of video games and how points are awarded where there is more than one lead practitioner involved in the making of a programme. The Department also agreed to amendments sought by the European Commission in respect of a minimum level of cultural content to be achieved in Section A and an adjustment to how indeterminate locations and characters are treated in the cultural tests for animation and video games. The final versions of the cultural tests are available from [link].

**9.** **Guidance**

9.1 The British Film Institute (BFI) Certification Unit will be responsible for assessing applications for the certification of British programmes and video games. The Department and the BFI have developed guidance on the cultural tests (which is similar to the current guidance for British film certification) [link]. The Department has deposited a copy of the guidance in the Libraries of the House of Commons.

**10. Impact**

10.1 The impact on business, charities or voluntary bodies is as set out in the Tax impact assessment published by HM Treasury in June 2012 as part of the consultation on the design of these creative sector tax reliefs – Annex B at <http://www.hm-treasury.gov.uk/consult_creative_sector_tax_reliefs.htm>. Businesses will have to complete a cultural test application for each production in order to qualify for the relief, as well as making the claim for the relief through their tax returns. These regulations are necessary for the administration of the reliefs.

10.2 The impact on the public sector, chiefly the BFI and the Department, is beneath the financial threshold that would indicate that a Regulatory Impact Assessment should be prepared. The BFI will receive from the Department an additional one off payment of £250k in 2012/13 to meet the cost of expanding the film certification function to administer these new reliefs. The on-going cost of expanded certification functions for both BFI and DCMS will be assessed during the first year of operation.

10.3 An Impact Assessment has not been prepared for this instrument.

**11.** **Regulating small business**

11.1The legislation applies to small business. The views of small businesses were taken into account before the consultation and during the consultation period. The cultural test is a mandatory requirement for any programme or video game wishing to qualify for the tax relief.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to seek to minimise the particulars required to apply for tax relief. The Department is satisfied that the impact on small businesses is not disproportionate to that on other businesses.

11.3 The basis for the decision on what action to take to assist small business is that the cultural test will benefit the UK’s creative content sector by encouraging the use of British content and practitioners.

**12.** **Monitoring & review**

12.1 The UK is required to submit an annual report to the European Commission on the implementation of the cultural test measure to ensure it is consistent with the original State aid notification.

12.2 This cultural measure will be monitored and assessed alongside other measures in the Government’s package of corporate tax reforms.

**13. Contact**

Ian Jenkins at the Department for Culture, Media and Sport Tel: 020 7211 2288 or e-mail [ian.jenkins@culture.gsi.gov.uk](mailto:ian.jenkins@culture.gsi.gov.uk) can answer any queries regarding the instrument.