



STATUTORY INSTRUMENTS.

S.I. No. 119 of 2019



FILM REGULATIONS 2019

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S.I. No. 119 of 2019

FILM REGULATIONS 2019

The Revenue Commissioners, in exercise of the powers conferred on them by section 481 of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, and with the consent of the Minister for Culture, Heritage and the Gaeltacht in relation to the matters to be considered regarding the issue of certification under section 481(2), hereby make the following regulations:

PART 1

General

Citation and commencement

1. (1) These Regulations may be cited as the Film Regulations 2019.
- (2) These Regulations come into operation on 27th March 2019 as respects applications made on or after that date by a producer company for a certificate under section 481 of the Act of 1997, applications to which subsection 24, 25 or 26, as inserted by section 26(1)(o) of the Finance Act 2018, apply and applications to which Regulation 4 apply.

Interpretation

2. In these Regulations, except where the context otherwise requires -
 - “Act of 1997” means the Taxes Consolidation Act 1997 (No. 39 of 1997);
 - “completion” means when any commissioning party confirms delivery and acceptance of the film, or when a film has been screened or broadcast in a public viewing; and in the case of a series, the date on which all episodes of the series are delivered and accepted;
 - “compliance report” means a compliance report as provided for in section 481(2C)(da) of the Act of 1997;
 - “delivery and acceptance” means the date when a copy of the film, of broadcast quality and rendered in accordance with written agreements, is delivered to the commissioning body or entity, and is not contingent on the delivery of other contracted deliverables such as alternative versions or supporting materials;
 - “eligible goods, services and facilities” shall be construed in accordance with Part 8;
 - “film group” means the producer company, the qualifying company and all businesses that are regarded as partner or linked businesses of either company;
 - “Irish production” means the portion or element of the production of a film carried out in Ireland for which an application is being made under section 481 of the Act of 1997, the commencement date of which shall be the date on

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th March, 2019.*

which the qualifying company commences the main body of the Irish production, including, as relevant to each film —

- (a) the commencement of the principal photography,
- (b) the commencement of animation drawings,
- (c) the commencement of the first model movement,
- (d) the commencement of Irish post production, or
- (e) the first day of Irish Digital Shot production;

“linked businesses” has the same meaning as in section 489 of the Act of 1997;

“partner businesses” has the same meaning as in section 489 of the Act of 1997;

“qualifying expenditure” shall be construed in accordance with Part 7;

“series” means a production consisting of two or more episodes commissioned as a series to be shown or capable of being shown on a daily or weekly schedule, the episodes of which may have in common the same cast and crew or the same environment or background;

“top sheet production expenditure summary” means a summary of the total cost of production and eligible expenditure classified into the principal categories of the film production budget or in such a form and containing such information as the Revenue Commissioners may specify.

PART 2

Application to Minister for Culture, Heritage and the Gaeltacht for certification

Application for certification

3. (1) An application for a certificate under section 481(1A) of the Act of 1997 shall be made in writing to the Minister by a producer company and shall be submitted at least 21 working days prior to the commencement of the Irish production.

(2) The Minister shall set out the manner and format of an application for a certificate under this regulation, the information that shall accompany such an application in accordance with Schedule 1 to these regulations, and the order and manner that information shall be set out in.

(3) A certificate shall not be issued by the Minister under section 481(2)(a) of the Act of 1997 in relation to a film unless —

- (a) the film is eligible for certification under Part 3, and
- (b) the Minister is satisfied that the film will either or both -
 - (i) be of importance to the promotion, development and enhancement of the national culture including, where applicable, the Irish language (referred to as ‘the Culture test’), and

- (ii) act as an effective stimulus to film making in the State through, among other things, the provision of quality employment, and training and skills development opportunities (referred to as ‘the Industry development test’).
- (4) In issuing a certificate the Minister shall set out:
- (a) the conditions—
 - (i) relating to employment which shall be met by a producer company and qualifying company on the production of the film in accordance with section 481(2)(b)(iv) of the Act of 1997, and
 - (ii) which shall be met in relation to skills development on the production of the film in accordance with section 481(2)(b)(iv) of the Act of 1997,
 - (b) the requirements to be met in relation to the acknowledgement in the opening titles and/or closing credits of the film,
 - (c) the category of film under which the application has qualified for certification pursuant to Part 3, and
 - (d) whether the film meets the requirements of the Culture test, the Industry development test, or both.

Application for certification – transitional arrangements

4. (1) This regulation applies where the Irish production of a film has commenced in advance of the commencement of these regulations, where
- (a) no application was made to the Revenue Commissioners for a certificate in relation to that film, or
 - (b) an application was made but no authorisation has been issued by the Minister under section 481 of the Act of 1997 as it stood prior to amendment by section 26 of Finance Act 2018.
- (2) Notwithstanding regulation 3(1):
- (a) in respect of a film to which paragraph (1)(a) applies, an application for certification to the Minister under section 481(1A) of the Act of 1997 may be made in respect of a film to which this regulation applies at any time on or before 30 April 2019,
 - (b) in respect of a film to which paragraph (1)(b) applies, the application for certification to the Revenue Commissioners shall be treated as an application to the Minister under section 481(1A) of the Act of 1997.
- (3) For the purposes of section 481(1B) of the Act of 1997, all applications made under this regulation shall be treated as having been made on 31 December 2018.

PART 3

Categories of films eligible for certification

Categories of films eligible for certification

5. Subject to Regulation (6), films which are within any of the following categories may be eligible for certification by the Minister:

- (1) Feature film,
- (2) Short film of feature quality,
- (3) Television drama (feature length or series),
- (4) Animation (whether computer generated or otherwise, but excluding computer games),
- (5) Creative documentary, where the project —
 - (a) is based on an original theme, preferably demonstrated by a script or treatment, the design and style of which bear the undeniable stamp of creative originality and personal perspective,
 - (b) contains a certain timeless element so that there is no loss of interest when the event with which it may be linked has passed,
 - (c) involves production arrangements which give evidence of, in particular, a substantial period of preparation and a significant period devoted to post- production, and
 - (d) contains significant original filming and does not merely report information.

Categories of films not eligible for certification

6. Films which are within any of the following categories are not eligible for certification by the Minister:

- (1) Films made for exhibition as an advertisement or advertising programme,
- (2) Reality television whether scripted or unscripted,
- (3) Production, other than a documentary, all or substantially all of which consists of stock footage;
- (4) Current affairs programming which may feature a variety of formats, including live or pre-recorded news reporting, interviews, debates, round-table discussions, documentary segments, open forums and panel discussions,
- (5) Talk show formats that may involve one or more hosts and are largely unscripted,
- (6) Review, magazine style or lifestyle programmes,
- (7) Localised versions of licenced international formats,

- (8) Films comprising or substantially based on -
- (a) public or special performances staged for filming or otherwise,
 - (b) sporting events,
 - (c) games or competitions or contests,
 - (d) demonstration programmes for tasks, hobbies or projects,
 - (e) live programming.

PART 4

Records to be provided and maintained by a producer company and a qualifying Company

Records to demonstrate breakdown of expenditure

7. (1) The records which a producer company shall provide to the Revenue Commissioners in relation to a qualifying film when requested to do so shall include a breakdown of expenditure to show —

- (a) qualifying expenditure,
- (b) the total cost of production,
- (c) the eligible expenditure, broken down by the amount of money expended:
 - (i) on the employment of eligible individuals,
 - (ii) on the provision of eligible goods, services and facilities, and
 - (iii) the amount of money expended otherwise than in accordance with subparagraphs (i) or (ii),
- (d) full production accounts, and
- (e) details of any transactions with a member of the film group.

(2) The records which a producer company and a qualifying company must have available, prior to making a claim under section 481(2G)(b)(i) of the Act of 1997, should be prepared in the form set out in Schedule 2 and include:

- (a) signed and fully executed finance agreements,
- (b) (i) bank statements demonstrating that an amount not less than 68% of the amount on which the film corporation tax credit is based has been lodged in accordance with section 481(2A)(b)(vii)(II) of the Act of 1997, and details of any charges or liens over that amount, or
- (ii) a certificate from the Broadcasting Authority of Ireland (as established by the Broadcasting Act 2009), the Irish Film Board (as established by the Irish Film Board Act 1980), or equivalent bodies established in an EEA state, confirming that the body's requirements in relation to the

financial and other arrangements for the film have been fulfilled to the extent that the body has agreed to release its production funding to the producer company in relation to the qualifying film, where the due diligence procedures performed by the body, prior to its issuing the certificate, have been approved by the Revenue Commissioners,

- (c) the production budget broken down to show eligible expenditure, and where the eligible expenditure is greater than 50% of the total cost of production, also the total cost of production, and
- (d) signed production, financing, distribution, or sale of the film agreements, where relevant.

(3) The records which a producer company and a qualifying company must have available in addition to those set out in paragraph (2), prior to making a claim under section 481(2G)(b)(ii) of the Act of 1997, should be prepared in the form set out in Schedule 3, and should include:

- (a) any records necessary to ascertain compliance with the conditions of the Minister's certificate,
- (b) the books of first entry, including a cash receipts book, purchases day book, cheque payments book, creditors ledger and petty cash book,
- (c) trial balance, all ledgers and journals to which all transactions are posted,
- (d) the back-up documentation from which the books of first entry were completed, including —
 - (i) suppliers' invoices, credit notes, statements and delivery notes,
 - (ii) cheque stubs and petty cash vouchers, and
 - (iii) bank statements and correspondence including those items verifying lodgements into bank accounts and transfers out of such accounts;
- (e) linking documents, including documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts.

(4) Nothing in these regulations restricts the level of documentation the Revenue Commissioners may require to determine compliance with section 481 of the Act of 1997.

Obligation to keep records

8. Notwithstanding any other provision of the Act of 1997 the Revenue Commissioners may request the records described in Regulation 7 at any time within a period of up to 6 years after the later of —

- (a) completion of the qualifying film, or

- (b) a claim under section 481(2G)(b)(ii) of the Act of 1997.

PART 5

Completion Requirements

Notification of completion of production and provision of copies

9. (1) A producer company shall notify the Minister in writing of the completion of production of a qualifying film within 6 months of the date of such completion in accordance with section 481(2C)(d) of the Act of 1997.
- (2) Subject to Regulation 10, a producer company shall, within 6 months of the completion of production of a qualifying film, provide 2 copies of the film to the Minister in DVD format or such other format as may be specified in the certificate issued by the Minister.

PART 6

Requirements relating to Compliance

Compliance report

- 10 (1) A producer company shall prepare a compliance report prior to making a claim under section 481(2G)(b)(ii) of the Act of 1997.
- (2) The report shall -
- (a) contain a declaration in the form specified in Schedule 4, and
 - (b) be accompanied by the matters set out in Schedule 5.

PART 7

Type of expenditure that may be qualifying expenditure on production of a qualifying film

Qualifying expenditure

11. Subject to Regulation 12, the type of expenditure which may be qualifying expenditure on the production of a qualifying film shall include all expenditure incurred on the production of the film from the development phase up to and including post-production together with the cost of providing an archive print.

Non-qualifying expenditure

12. Non-qualifying expenditure on the production of a qualifying film includes:
- (a) costs associated with the distribution or promotion of the film,

- (b) costs arising after delivery of the materials contracted for with the relevant distributor or broadcaster,
- (c) costs of organising or providing pre-sales monies,
- (d) costs of acquiring rights other than those necessary for the production of the film (including relevant legal fees),
- (e) capital expenditure on assets used in the production of the film which are not used up in that process,
- (f) amounts that are paid out of, or are dependent on, or arise from rights in, the receipts, earnings or profits of the film,
- (g) fees or other payments deferred unless the payment of such sums is made no later than 4 months after completion,
- (h) professional fees associated with claiming 'tax shelters' or the film corporation tax credit including opining on the eligibility for a 'shelter' or the credit.

PART 8

Eligible goods, services and facilities, and conditions to be satisfied

Interpretation – Part 8

13. In this Part -

“provided within the State” means —

- (a) (i) in the case of goods which are dispatched or transported, that the dispatch or transportation to the person to whom they are provided begins in the State, and
- (ii) in the case of goods which are not dispatched or transported, that the goods are located in the State at the time they are provided;
- (b) in the case of facilities, that the facilities are located in the State,
- (c) in the case of transport, that the transportation takes place within the State, or, where transportation takes place across borders, that the journey begins or ends in the State,
- (d) in the case of a service, that the activities constituting such service are carried on in the State and that any goods, facilities or transport associated with such service satisfy any of the conditions specified in paragraphs (a) to (c),

“relevant person” means a person carrying on a business in the State from a fixed place of business.

Eligible goods, services and facilities

14. Subject to Regulation 15, goods, services and facilities are qualifying expenditure where they are used or consumed in the State in the production of

a qualifying film and are provided within the State by a relevant person directly or indirectly to a qualifying company.

Other person engaged

15. Where a relevant person engages, or arranges for, another person to provide goods, services or facilities, such goods, services or facilities shall not be qualifying expenditure unless that other person is also a relevant person and the goods, services and facilities are provided as part of the business carried on from the fixed place of business in the State.

PART 9

Requirements relating to Payment of Specified Amount

Bank accounts

16. (1) The qualifying company shall open a bank account in a banking institution based in the State from which all eligible expenditure is to be paid.

(2) The specified amount shall be paid to the producer company to a bank account in a banking institution in the State and shall be transferred to the account of the qualifying company as set out in this regulation.

(3) The specified amount shall not be paid unless the producer company has been carrying on the trade referred to in paragraph (b) of the definition of producer company in section 481(1) of the Act of 1997 for a period of 21 months prior to a claim under section 481(2G)(b) of the Act of 1997.

PART 10

Miscellaneous

Currency exchange rate

17. (1) For the purposes of making a claim under section 481(2G)(b)(i) of the Act of 1997, the currency rate of exchange to be applied to budgeted expenditure on the production of a qualifying film, shall be the rate on the day the claim is made.

(2) The currency rate of exchange for expenditure on the production of a qualifying film, shall be calculated in accordance with section 79 of the Act of 1997 for the purposes of a claim under section 481(2G)(b)(ii) of that Act.

PART 11
Revocation

Revocation

18. Except in so far as they relate to an application to which these regulations do not apply, the Film Regulations 2015 (S.I. 4 of 2015) are revoked.

SCHEDULE 1**Information to support an application to the Minister for a certificate under section 481 of the Act of 1997**

Tab A	Completed application form
Tab B	Synopsis of Film
Tab C	Completed Screenplay, Sample Television Scripts or Storyboard
Tab D	Detailed Production Schedule
Tab E	Person Days Schedule highlighting linkages with skills development plans
Tab F	Proposed Skills Development plan
Tab G	Full List of Heads of Departments
Tab H	Track record and CVs for Producer, Director, Writer(s)
Tab I	A top sheet production expenditure summary
Tab J	Where applicable, evidence supporting an application to be treated as a low budget or difficult film
Tab K	Declaration that neither the applicant company nor the undertaking which it is part of is an undertaking in difficulty in accordance with section 481(2A)(b)(v) of the Act of 1997
Tab L	Declaration that no company in the film group is the subject of outstanding recovery proceedings in accordance with section 481(2A)(b)(vi) of the Act of 1997
Tab M	Undertaking that both the producer company and qualifying company are in compliance with all employment law requirements/legislation and will continue to be in compliance throughout the production of the qualifying film.

SCHEDULE 2

Information required to support a claim for the film corporation tax credit under section 481(2G)(b)(i) of the Act of 1997

Tab A	A full copy of the application as submitted to and approved by the Department of Culture, Heritage and the Gaeltacht and a copy of the certificate
Tab B	Screenplay and Writers' Agreements and Option agreement
Tab C	Production, Financing and Distribution Agreement(s)
Tab D	Other relevant agreements and documentation
Tab E	Heads of Department and detailed person day schedule showing tax residency
Tab F	Production Budget to support the claim, including - <ul style="list-style-type: none"> (a) an updated top-sheet production expenditure summary, (b) details of each element of qualifying expenditure making up the total cost of production, (c) details of each element of qualifying expenditure supporting the eligible expenditure amount, and (d) the amounts to be incurred on the employment of eligible individuals and on the provision of eligible goods, services and facilities
Tab G	Schedule of Fees based on total cost of production and eligible expenditure
Tab H	Fully executed contracts for funding and evidence that any conditions that are required to be satisfied in those agreements for funding to commence have been fulfilled
Tab I	Completion Bond Contract, if applicable
Tab J	Pre-Sales and Distribution Agreements
Tab K	A diagram detailing all the parties involved, their respective responsibilities and the flow of funds between them
Tab L	A diagram setting out all businesses in the film group
Tab M	Details of all relevant transactions between the film group companies
Tab N	Confirmation that no financial arrangements of a type referred to in section 481(2C)(b) of the Act of 1997 exist or are proposed
Tab O	Declaration that no relevant party to the claim has outstanding tax returns or liabilities
Tab P	Statements confirming lodgement of funds or Irish Film Board, Broadcasting Authority of Ireland or appropriate body confirmation of funding, if applicable in accordance with Regulation 7

- Tab Q Declaration of any issues that might impact on the conditions for relief under section 481 of the Act of 1997.
- Tab R Confirmation that the declaration provided to the Minister in accordance with Tab K and Tab L of Schedule 1 continue to be valid.

SCHEDULE 3

Information required to support a claim for the film corporation tax credit under section 481(2G)(b)(ii) of the Act of 1997

Tab A	A full copy of the application as submitted to and approved by the Department of Culture, Heritage and the Gaeltacht and a copy of the certificate
Tab B	Screenplay and Writers' Agreements and Option agreement
Tab C	Production, Financing and Distribution Agreement(s)
Tab D	Other relevant agreements and documentation
Tab E	Heads of Department and detailed person day schedule showing tax residency
Tab F	Production Accounts to support the claim, including - <ul style="list-style-type: none"> (a) an updated top-sheet production expenditure summary, (b) details of each element of qualifying expenditure making up the total cost of production, (c) details of each element of qualifying expenditure supporting the eligible expenditure amount, and (d) specifying the amounts incurred on the employment of eligible individuals and on the provision of eligible goods, services and facilities
Tab G	Schedule of Fees based on total cost of production and eligible expenditure
Tab H	Fully executed contracts for funding and evidence that any conditions that are required to be satisfied in those agreements for funding to commence have been fulfilled;
Tab I	Completion Bond Contract, if applicable
Tab J	Pre-Sales and Distribution Agreements
Tab K	A diagram detailing all the parties involved, their respective responsibilities and the flow of funds between them
Tab L	A diagram setting out all businesses in the film group,
Tab M	Details of all relevant transactions between the film group companies
Tab N	Confirmation that no financial arrangements of a type referred to in section 481(2C)(b) of the Act of 1997 exist or are proposed
Tab O	Declaration that no relevant party to the claim has outstanding tax returns or liabilities
Tab P	Statements confirming lodgement of funds or Irish Film Board, Broadcasting Authority of Ireland or appropriate body confirmation of funding, if applicable in accordance with Regulation 7

- Tab Q Compliance report in the form detailed in Schedule 4.
- Tab R Confirmation that the declaration provided to the Minister in accordance with Tab K and Tab L of Schedule 1 continue to be valid.

SCHEDULE 4
Compliance report declaration

Qualifying Company Name: __

Producer Company Name: ___

Name of Film: _____

Culture Certificate Number: __

Declaration

I declare that to the best of my knowledge and belief the information given in this Report is correct, and that the conditions of relief applying to the company and film are satisfied and in particular that:

- The film was completed on: / /
- The name and address of the banking institution employed in relation to the administration of production expenditure incurred in the State is:

Producer company: _____

Qualifying company: _____

- All the documentation and final signed, dated and witnessed versions of all agreements, required to be completed by the producer company, in advance of a claim, including, where applicable a Completion Bond, have been submitted.
- All the conditions contained in the certificate issued by Minister to the qualifying company under section 481 of the Taxes Consolidation Act 1997, were complied with.
- The sole activity of the qualifying company has been the production of the qualifying film.
- The producer company and qualifying company have maintained records, in accordance with Part 5 of the Film Regulations 2015 and section 481 of the Taxes Consolidation Act 1997.
- The attachments listed in the schedule are available.
- The producer company has existed for the purpose of carrying out the trade of producing films on a commercial basis since [date] and will continue to actively trade in the production of films in accordance with section 481(2C)(e) for at least a further 12 months from the date of this letter.

Signature: _____ Date: / /

Capacity: Secretary

SCHEDULE 5

Documents to include in a compliance report in relation to a qualifying film

- | | |
|--------------|---|
| Tab A | Completed compliance report declaration |
| Tab B | A copy of the film in DVD format or such other format as may be specified in the certificate issued by the Minister in relation to the film. |
| Tab C | <p>A report by the producer company for the purposes of supporting the claim under section 481(2G)(b)(ii) of the Act of 1997, which includes—</p> <ul style="list-style-type: none"> (a) details of the amount of money expended directly in the State on the employment of eligible individuals and on the provision of eligible goods, services and facilities, itemised in accordance with the top sheet production expenditure summary, (b) details of the amount of the production expenditure on the qualifying film, itemised in accordance with the top sheet production expenditure summary showing the total cost of production and details of items excluded in accordance with Part 7, (c) confirmation that the provisions of Chapter 1A of Part 18 of the Act of 1997 have been complied with, (d) details of any outstanding creditors or any other amounts due by the qualifying company at the date of completion and at the claim. (e) in a case where a payment of an amount equal to at least 30 per cent of the specified amount was made by the qualifying company to any person or to a group of 2 or more persons, who are connected (within the meaning of section 10 of the Act of 1997) with each other, details of: <ul style="list-style-type: none"> (i) the identity of that person or persons, (ii) the nature of the goods, services or facilities provided by that person or persons to the qualifying company, and (iii) the amount or amounts paid to that person or persons, (f) details of any foreign currency rates used, (g) details of any related party transactions, (h) the date upon which the completed qualifying film is first delivered to any financier or distributor of the qualifying film, and |

- (i) a statement that no significant relevant events have occurred since the date notified to the Minister, in accordance with Regulation 10, which would alter, to any material extent, the figures on which the claim is based.

Tab D Details of the source of all amounts used to finance the entire production expenditure on the qualifying film.

Tab E Evidence of compliance with all conditions of the Minister's certificate including in relation to skills development and employment.

The Minister for Culture, Heritage and the Gaeltacht consents to the making of these Regulations, insofar as they relate to the matters to be considered regarding the issue of certificates under subsection (2) of section 481.



GIVEN under my Official Seal,
11 March, 2019.

JOSEPHA MADIGAN,
Minister for Culture, Heritage and the Gaeltacht.

The Minister for Finance consents to the making of these Regulations.



GIVEN under my Official Seal,
26 March, 2019.

PASCHAL DONOHOE,
Minister for Finance.

GIVEN under my Official Seal,
27 March, 2019.

NIALL CODY,
Revenue Commissioner.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
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