Explanatory Memorandum on the Exchange of Notes to amend the Film Co-production Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa

Title of the Treaty
Exchange of Notes to amend the Film Co-production Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa

Command Paper: 9158

Subject Matter
The purpose of the co-production agreement is to provide an official framework under which film producers in both countries can share financial, technical and creative resources to enable them to make their films and qualify for national support measures in their own country. It allows co-productions to be made under the Agreement and to allow UK co-producers and their counterparts in South Africa to realise the benefits that stem from the Agreement. The treaty was signed in 2006 and is now being amended to allow television programmes as well as films to qualify as co-productions.

Ministerial Responsibility
The Secretary of State for Culture, Media and Sport, the Rt. Hon. John Whittingdale MP, has responsibility for the policy underlying the Agreement and for implementing its provisions. The Secretary of State for Foreign and Commonwealth Affairs, Rt Hon Philip Hammond MP, has overall responsibility for policy relating to the UK's relations with South Africa.

Policy Considerations
The overall aim of having co-production agreements is to secure increased inward investment for the UK and encourage cultural cross-fertilisation by enabling filmmakers from both countries to work together using their respective strengths and facilities to create films that are culturally relevant to both countries.

The agreement enables films and television programmes made jointly by UK producers and their South African counterparts to qualify as films or television programmes with "national" status in both the UK and in South Africa, meaning that they are thus eligible to apply for any national incentives offered by either country. The amended agreement will further help to maximise the potential of the film and television industries in both countries, including the infrastructure, the audiovisual culture, production facilities, locations and a suitably skilled workforce. Development of these audiovisual industries will be mutually beneficial to both countries, particularly in respect of the growth and competitiveness of their audiovisual industries and the enhancement of their creative cultures.

The definition of “film” in the treaty is now being amended to mean “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, and which is expected to be exhibited to the public at a cinema, on television or any other distribution platform." This amendment to allow television programmes to qualify reflects the trend towards "high end" television (typically programmes with production budgets of more than £1m per broadcast hour) for which the UK introduced a dedicated and highly successful tax relief in 2013.

An enhanced co-production relationship with South Africa will provide a further foothold for the South African export market and for complementary locations, which enhance the UK's competitiveness for productions without competing with locations in the UK. The agreement is also designed to increase the contribution films and television programmes make to each country in terms of their accessibility to the public and as a medium through which the diversity of the culture and heritage of both countries may be reflected, enhanced and promoted.

If made in accordance with this agreement, films and television programmes may be certified as British. Such qualification is important as it is one of the eligibility criteria for receiving film and high-end television programme tax relief in the UK and is also important for the selective support available from the British Film Institute and other Lottery funded screen agencies. The eligibility criteria of these bodies include a requirement that a film is wholly or substantially capable of being certified as a British film.

Financial
The main cost is in the UK tax relief. Nine film productions have used the treaty since its introduction in 2006 with a total expenditure of over £55m. Of this, just under half was spent in the UK, thereby allowing UK producers to claim tax relief on this expenditure. It is reasonable to assume that film production will continue at these levels in the future.

The extension to the UK/South Africa co-production treaty to allow television programmes is highly likely to bring further investment from the high-end television production sector and will allow UK television producers to apply for high-end television tax relief, for which the threshold is £1m production expenditure per hour. The expectation is for at least two high-end television projects to use the treaty each year – for example a ten episode series and one off drama, with a combined expenditure of £11m. In doing so, at least 5m of the expenditure would be expected to be incurred in the UK, with the ability to achieve up to £1m in high-end television tax relief. There is also scope for animation television and children's television programmes to use the treaty.

Implementation
Subject to completion of ratification procedures, this treaty will be added to the list of international agreements under which television programmes may qualify as British programmes. This list of international agreements is set out in schedule 1 to the Cultural Test (Television Programmes) Regulations 2013 (S.I. 2013/1831).

Consultations
The television industry has actively sought the amendment of this treaty to include an expanded definition of film and will welcome this revision.

As of November 2015 DCMS has bilateral co-production agreements with China, Australia, Brazil, Canada, France, Jamaica, New Zealand, South Africa, India, Morocco, Israel and the Palestinian Liberation Organisation for the benefit of the Palestinian Authority.

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Minister for Culture and the Digital Economy