Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

[F1CHAPTER 4

QUALIFICATION FOR PROTECTION, EXTENT AND INTERPRETATION

Textual Amendments

F1 Ss. 206-212 become Pt. 2 Ch. 4 (1.2.2006) by virtue of The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), **reg. 4(7)** (with reg. 8)

Modifications etc. (not altering text)

C1 Pt. 2 applied (with modifications) (6.4.2017) by The Copyright and Performances (Application to Other Countries) Order 2016 (S.I. 2016/1219), arts. 1(1), 12, **Sch. Pt. 2** (with art. 13)

C2 Pt. 2 applied (with modifications) (6.4.2017) by The Copyright and Performances (Application to Other Countries) Order 2016 (S.I. 2016/1219), arts. 1(1), 11, **Sch. Pt. 2** (with art. 13)

C3 Pt. 2 restricted (6.4.2017) by The Copyright and Performances (Application to Other Countries) Order 2016 (S.I. 2016/1219), arts. 1(1), 11, **Sch.** (with art. 13)

X1 Qualification for protection and extent

Editorial Information

X1 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Changes to legislation: *There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter 4. (See end of Document for details)*

[X2]206 Qualifying countries, individuals and persons.

(1) In this Part—

"qualifying country" means—

(a) the United Kingdom,

[F2](b) . . . . . .

[[F3](ba) the Channel Islands, the Isle of Man or Gibraltar,**]** or

[[F4](bb) a country which is a party to the Rome Convention,**]** or

(c) to the extent that an Order under section 208 so provides, a country designated under that section as enjoying reciprocal protection;

"qualifying individual" means a citizen or subject of, or an individual resident in, a qualifying country; and

"qualifying person" means a qualifying individual or a body corporate or other body having legal personality which—

(a) is formed under the law of a part of the United Kingdom or another qualifying country, and

(b) has in any qualifying country a place of business at which substantial business activity is carried on.

(2) The reference in the definition of "qualifying individual" to a person's being a citizen or subject of a qualifying country shall be construed—

(a) in relation to the United Kingdom, as a reference to his being a British citizen, and

(b) in relation to a colony of the United Kingdom, as a reference to his being a British Dependent Territories' citizen by connection with that colony.

(3) In determining for the purpose of the definition of "qualifying person" whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country.

[[F5](4) Her Majesty may by Order in Council—

(a) make provision for the application of this Part to a country by virtue of paragraph (bb) or (c) of the definition of "qualifying country" in subsection (1) to be subject to specified restrictions;

(b) amend the definition of "qualifying country" in subsection (1) so as to add a country which is not a party to the Rome Convention;

(c) make provision for the application of this Part to a country added under paragraph (b) to be subject to specified restrictions.

(5) A statutory instrument containing an Order in Council under this section is subject to annulment in pursuance of a resolution of either House of Parliament.**]**

[[F6](6) In this section, "the Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961.**]**

***Changes to legislation:** There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter 4. (See end of Document for details)*

Editorial Information

X2 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F2 S. 206(1)(b) omitted (31.12.2020) by virtue of The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/605), regs. 1(2), **22** (with reg. 38) (as amended by S.I. 2020/1050, regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)

F3 Words in s. 206(1) inserted (1.12.2016 for specified purposes, 6.4.2017 in so far as not already in force) by Intellectual Property Act 2014 (c. 18), **ss. 22(5)(b)**, 24(1); S.I. 2016/1139, arts. 2, 3 (with art. 4)

F4 Words in s. 206(1) inserted (1.12.2016 for specified purposes, 6.4.2017 in so far as not already in force) by Intellectual Property Act 2014 (c. 18), **ss. 22(5)(c)**, 24(1); S.I. 2016/1139, arts. 2, 3 (with art. 4)

F5 S. 206(4)(5) inserted (1.12.2016 for specified purposes, 6.4.2017 in so far as not already in force) by Intellectual Property Act 2014 (c. 18), **ss. 22(6)**, 24(1); S.I. 2016/1139, arts. 2, 3 (with art. 4)

F6 S. 206(6) inserted (1.12.2016 for specified purposes, 6.4.2017 in so far as not already in force) by Intellectual Property Act 2014 (c. 18), **ss. 22(7)**, 24(1); S.I. 2016/1139, arts. 2, 3 (with art. 4)

[X3]207 Countries to which this Part extends.

This Part extends to England and Wales, Scotland and Northern Ireland.

Editorial Information

X3 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X4]208 Countries enjoying reciprocal protection.

(1) Her Majesty may by Order in Council designate as enjoying reciprocal protection under this Part—

(a) a Convention country, or

(b) a country as to which Her Majesty is satisfied that provision has been or will be made under its law giving adequate protection for British performances.

(2) A "Convention country" means a country which is a party to a Convention relating to performers' rights to which the United Kingdom is also a party.

(3) A "British performance" means a performance—

(a) given by an individual who is a British citizen or resident in the United Kingdom, or

(b) taking place in the United Kingdom.

(4) If the law of that country provides adequate protection only for certain descriptions of performance, an Order under subsection (1)(b) designating that country shall contain

Changes to legislation: *There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter 4. (See end of Document for details)*

provision limiting to a corresponding extent the protection afforded by this Part in relation to performances connected with that country.

(5) The power conferred by subsection (1)(b) is exercisable in relation to [F7]... any colony of the United Kingdom, as in relation to a foreign country.

(6) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Editorial Information

X4 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F7 Words in s. 208(5) omitted (1.12.2016 for specified purposes, 6.4.2017 in so far as not already in force) by virtue of Intellectual Property Act 2014 (c. 18), **ss. 22(8)**, 24(1); S.I. 2016/1139, arts. 2, 3 (with art. 4)

[X5]209 Territorial waters and the continental shelf.

(1) For the purposes of this Part the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.

(2) This Part applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.

(3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the [M1]Continental Shelf Act 1964.

Editorial Information

X5 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Marginal Citations

M1 1964 c. 29.

[X6]210 British ships, aircraft and hovercraft.

(1) This Part applies to things done on a British ship, aircraft or hovercraft as it applies to things done in the United Kingdom.

(2) In this section—

"British ship" means a ship which is a British ship for the purposes of the **[**F8Merchant Shipping Act 1995**]** otherwise than by virtue of registration in a country outside the United Kingdom; and

"British aircraft" and "British hovercraft" mean an aircraft or hovercraft registered in the United Kingdom.

Editorial Information

X6 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F8 Words in s. 210(2) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 84(b)** (with s. 312(1))

[F9**210A Requirement of signature: application in relation to body corporate

(1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—

section 191B(3) (assignment of performer's property rights);

section 191C(1) (assignment of future performer's property rights);

section 191D(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—

section 205D(2)(a) (assertion of performer's moral rights);

section 205J(2) (waiver of performer's moral rights).**]**

Textual Amendments

F9 S. 210A inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), **reg. 7** (with reg. 8)

X7 Interpretation

Editorial Information

X7 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X8]211 Expressions having same meaning as in copyright provisions.

(1) The following expressions have the same meaning in this Part as in Part I (copyright) —

[[F10]assignment (in Scotland),**]**
broadcast,
business,
[F11] . . . . . .
[F12] . . . . . .
[[F13]communication to the public,**]**
country,
defendant (in Scotland),
delivery up (in Scotland),
[[F14]the EEA,**]**
[[F14]EEA state,**]**
film,
[[F15]injunction (in Scotland)**]**
literary work,
published, [F16]. . .
[[F17]signed,**]**
[[F18]sound recording, and**]**
[[F19]wireless broadcast.**]**

(2) **[**[F20] The provisions of—

(a) section 5B(2) and (3) (supplementary provisions relating to films), and

(b) section 6(3) to (5A) and section 19(4) (supplementary provisions relating to broadcasting),

apply**]** for the purposes of this Part, and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part I and in relation to an infringement of copyright.

Editorial Information

X8 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F10 S. 211(1): entry inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 6(2)** (with reg. 8)

F11 S. 211(1): entry repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F12 S. 211(1): entry repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F13 S. 211(1): entry inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 15(5)(a)(i)** (with regs. 31-40)

F14 S. 211(1): entries relating to "the EEA," and "EEA state," substituted (29.4.2006) for entry relating to "EEA national," by The Intellectual Property (Enforcement, etc.) Regulations 2006 (S.I. 2006/1028), reg. 2(2), **Sch. 2 para. 12**

F15 S. 211(1): entry inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 15(5)(a)(i)** (with regs. 31-40)
F16 Word in s. 211(1) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)
F17 S. 211(1): entry inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 6(2)** (with reg. 8)
F18 S. 211(1): entry substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 2(1)**, {Sch. 1para. 15(5)(a)(ii)} (with regs. 31-40)
F19 S. 211(1): entry inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 15(5)(a)(i)** (with regs. 31-40)
F20 Words in s. 211(2) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 6(3)** (with reg. 8)

[X9]212 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

[[F21]accessible copy (in paragraphs 3A to 3E of Schedule 2)	paragraph 3E(4) of Schedule 2**]**
[[F22]assignment (in Scotland)	section 211(1) (and section 177);**]**
broadcast (and related expressions)	section 211 (and section 6)
business	section 211(1) (and section 178)
[F23]	
. . . . .	
[[F24]communication to the public	section 211(1) (and section 20)**]**
[[F25]consent of performer (in relation to performer's property rights)**]**	**[**[F26]section 191A(2)**]**
country	section 211(1) (and section 178)
defendant (in Scotland)	section 211(1) (and section 177)
delivery up (in Scotland)	section 211(1) (and section 177)
[[F21]disabled person (in paragraphs 3A to 3E of Schedule 2)	paragraph 3E(2) and (3) of Schedule 2**]**
[[F27]distribution right**]**	**[**[F28]section 182B(5)**]**
[[F29]the EEA and EEA state**]**	**[**[F30]section 211(1) (and section 172A)**]**
exclusive recording contract	section 185(1)
film	section 211(1) (and **[**[F31]section 5B**]**)
[[F32]group	section 205C(4);**]**
illicit recording	section 197
[[F33]injunction (in Scotland)	section 211(1) (and section 177)**]**
[[F34]issue to the public	section 182B;**]**

literary work	section 211(1) (and section 3(1))
[[F35]lending right**]**	**[**[F36]section 182C(7)**]**
[[F37]making available right	section 182CA**]**
performance	section 180(2)
[[F38]performer's non-property rights**]**	**[**[F39]section 192A(1)**]**
[[F40]performer's property rights**]**	**[**[F41]section 191A(1)**]**
published	section 211(1) (and section 175)
qualifying country	section 206(1)
qualifying individual	section 206(1) and (2)
qualifying performance	section 181
qualifying person	section 206(1) and (3)
recording (of a performance)	section 180(2)
recording rights (person having)	section 185(2) and (3)
[[F42]rental right)**]**	**[**[F43]section 182C(7)**]**
[[F44]reproduction right**]**	**[**[F45]section 182A(3)**]**
[[F46]rights owner (in relation to performer's property rights)**]**	**[**[F47] section 191A(3) and (4).**]**
[[F48]signed	section 211(1) (and section 176);**]**
sound recording	section 211(1) (and **[**[F49]section 5A**]**).
[[F50]wireless broadcast	section 211(1) (and section 178).**]]**

Editorial Information

X9 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F21 Words in s. 212 inserted (1.6.2014) by The Copyright and Rights in Performances (Disability) Regulations 2014 (S.I. 2014/1384), reg. 1(1), **Sch. para. 5**

F22 S. 212: entry inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 7** (with reg. 8)

F23 S. 212: entry repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F24 S. 212: entry inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 15(6)** (with regs. 31-40)

F25 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)

F26 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)

F27 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)

F28 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)

F29 S. 212: words in entry substituted (29.4.2006) by The Intellectual Property (Enforcement, etc.) Regulations 2006 (S.I. 2006/1028), reg. 2(2), **Sch. 2 para. 13**

F30 Words in s. 212 inserted (1.1.1996) by S.I. 1995/3297, **reg. 11(4)** (with Pt. III)
F31 Words in s. 212 substituted (1.1.1996) by S.I. 1995/3297, **reg. 9(6)(a)** (with Pt. III)
F32 S. 212: entry inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 7** (with reg. 8)
F33 S. 212: entry inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 15(6)** (with regs. 31-40)
F34 S. 212: entry inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 7** (with reg. 8)
F35 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)
F36 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)
F37 S. 212: entry inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 15(6)** (with regs. 31-40)
F38 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)
F39 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)
F40 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)
F41 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)
F42 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)
F43 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)
F44 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)
F45 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(4)** (with Pt. III)
F46 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)
F47 Words in s. 212 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(6)** (with Pt. III)
F48 S. 212: entry inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 7** (with reg. 8)
F49 Words in s. 212 substituted (1.1.1996) by S.I. 1995/3297, **reg. 9(6)(b)** (with Pt. III)
F50 S. 212: entry inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 7** (with reg. 8)

[F51 Supplementary

Textual Amendments

F51 S. 212A and cross-heading inserted (1.12.2016 for specified purposes, 6.4.2017 in so far as not already in force) by Intellectual Property Act 2014 (c. 18), **ss. 22(9)**, 24(1); S.I. 2016/1139, arts. 2, 3 (with art. 4)

212A Power to amend in consequence of changes to international law

(1) The Secretary of State may by order amend this Part in consequence of changes to international law in the area of performance rights.

(2) An order under this section must be made by statutory instrument; and no order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.**]**

Changes to legislation:
There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter 4.