

Status: Point in time view as at 01/04/1999. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 189.

RIGHTS IN PERFORMANCES: PERMITTED ACTS

Modifications etc. (not altering text)

- C1** Sch. 2 continued (31.10.2003) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 33](#) (with [regs. 31-40](#))

Introductory

- 1 (1) The provisions of this Schedule specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Part II; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) No inference shall be drawn from the description of any act which may by virtue of this Schedule be done without infringing the rights conferred by Part II as to the scope of those rights.
- (3) The provisions of this Schedule are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

VALID FROM 31/10/2003

[^{F1}Making of temporary copies]

Textual Amendments

- F1** Sch. 2 para. 1A and cross-heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 8\(2\)](#) (with [regs. 31-40](#))

- 1A The rights conferred by Part 2 are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—
- (a) a transmission of the recording in a network between third parties by an intermediary; or
 - (b) a lawful use of the recording;

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and which has no independent economic significance.

Criticism, reviews and news reporting

- 2 (1) Fair dealing with a performance or recording—
- (a) for the purpose of criticism or review, of that or another performance or recording, or of a work, or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by Part II.
- (2) Expressions used in this paragraph have the same meaning as in section 30.

Incidental inclusion of performance or recording

- 3 (1) The rights conferred by Part II are not infringed by the incidental inclusion of a performance or recording in a sound recording, film, broadcast or cable programme.
- (2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of, anything whose making was, by virtue of sub-paragraph (1), not an infringement of those rights.
- (3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording, broadcast or cable programme if it is deliberately included.
- (4) Expressions used in this paragraph have the same meaning as in section 31.

Things done for purposes of instruction or examination

- 4 (1) The rights conferred by Part II are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.
- (2) The rights conferred by Part II are not infringed—
- (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination, or
 - (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.
- (3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.
- For this purpose “dealt with” means sold or let for hire, or offered or exposed for sale or hire.
- (4) Expressions used in this paragraph have the same meaning as in section 32.

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*Playing or showing sound recording, film, broadcast
or cable programme at educational establishment*

- 5
- (1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by Part II.
 - (2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.
 - (3) Expressions used in this paragraph have the same meaning as in section 34 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

Recording of broadcasts and cable programmes by educational establishments

- 6
- (1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by Part II in relation to any performance or recording included in it.
 - (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire, or offered or exposed for sale or hire.
 - (3) Expressions used in this paragraph have the same meaning as in section 35 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

[^{F2}Lending of copies by educational establishments]

Textual Amendments

F2 Sch. 2 para. 6A and crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

- [^{F3}6A (1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by an educational establishment.
- (2) Expressions used in this paragraph have the same meaning as in section 36A; and any provision with respect to the application of that section made under section 174(2) (instruction given elsewhere than an educational establishment) applies also for the purposes of this paragraph.]

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Textual Amendments

F3 Sch. 2 para. 6A inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(3)** (with Pt. III)

[^{F4}Lending of copies by libraries or archives]

Textual Amendments

F4 Sch. 2 para. 6B and crossheading inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(3)** (with Pt. III)

- [^{F5}6B (1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by a prescribed library or archive (other than a public library) which is not conducted for profit.
- (2) Expressions used in this paragraph have the same meaning as in section 40A(2); and any provision under section 37 prescribing libraries or archives for the purposes of that section applies also for the purposes of this paragraph.]

Textual Amendments

F5 Sch. 2 para. 6B inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(3)** (with Pt. III)

Modifications etc. (not altering text)

C2 Sch. 2 para. 6B modified (1.12.1996) by S.I. 1996/2967, **reg. 35** (with Pt. III)

Copy of work required to be made as condition of export

- 7 (1) If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by Part II to make that copy.
- (2) Expressions used in this paragraph have the same meaning as in section 44.

Parliamentary and judicial proceedings

- 8 (1) The rights conferred by Part II are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting such proceedings.
- (2) Expressions used in this paragraph have the same meaning as in section 45.

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Royal Commissions and statutory inquiries

- 9 (1) The rights conferred by Part II are not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry or for the purpose of reporting any such proceedings held in public.
- (2) Expressions used in this paragraph have the same meaning as in section 46.

Public records

- 10 (1) Material which is comprised in public records within the meaning of the ^{M1}Public Records Act 1958, the ^{M2}Public Records (Scotland) Act 1937 or the ^{M3}Public Records Act (Northern Ireland) 1923 [^{F6}, or in Welsh public records (as defined in the Government of Wales Act 1998),] which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringing any right conferred by Part II.
- (2) Expressions used in this paragraph have the same meaning as in section 49.

Textual Amendments

F6 Words in Sch. 2 para. 10(1) inserted (1.4.1999) by 1998 c. 38, s. 125, Sch. 12 para. 29 (with ss. 139(2), 143(2)); S.I. 1999/782, art. 2

Marginal Citations

M1 1958 c. 51.
M2 1937 c. 43.
M3 1923 c. 20 (N.I.).

Acts done under statutory authority

- 11 (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe the rights conferred by Part II.
- (2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies to an Act of Parliament.
- (3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.
- (4) Expressions used in this paragraph have the same meaning as in section 50.

Transfer of copies of works in electronic form

- 12 (1) This paragraph applies where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of

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law, allow the purchaser to make further recordings in connection with his use of the recording.

- (2) If there are no express terms—
- (a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer, or
 - (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,
- anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.
- (3) The same applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.
- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in sub-paragraph (2) to the purchaser of references to the subsequent transferor.
- (5) This paragraph does not apply in relation to a recording purchased before the commencement of Part II.
- (6) Expressions used in this paragraph have the same meaning as in section 56.

Use of recordings of spoken works in certain cases

- 13 (1) Where a recording of the reading or recitation of a literary work is made for the purpose—
- (a) of reporting current events, or
 - (b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation,
- it is not an infringement of the rights conferred by Part II to use the recording (or to copy the recording and use the copy) for that purpose, provided the following conditions are met.
- (2) The conditions are that—
- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;
 - (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
 - (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
 - (d) the use is by or with the authority of a person who is lawfully in possession of the recording.
- (3) Expressions used in this paragraph have the same meaning as in section 58.

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Recordings of folksongs

- 14 (1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by Part II, provided the conditions in sub-paragraph (2) below are met.
- (2) The conditions are that—
- (a) the words are unpublished and of unknown authorship at the time the recording is made,
 - (b) the making of the recording does not infringe any copyright, and
 - (c) its making is not prohibited by any performer.
- (3) Copies of a recording made in reliance on sub-paragraph (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing any of the rights conferred by Part II.
- (4) In this paragraph—
- “designated body” means a body designated for the purposes of section 61, and
 - “the prescribed conditions” means the conditions prescribed for the purposes of subsection (3) of that section;
- and other expressions used in this paragraph have the same meaning as in that section.

[^{F7}Lending of certain recordings]

Textual Amendments

F7 Sch. 2 para. 14A and crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

- ^{F8}14A (1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of films or sound recordings shall be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.
- (3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.
- (4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) Nothing in this section affects any liability under section 184(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.

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(6) Expressions used in this paragraph have the same meaning as in section 66.

Textual Amendments

F8 Sch. 2 para. 14A inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

Playing of sound recordings for purposes of club, society, &c

- 15 (1) It is not an infringement of any right conferred by Part II to play a sound recording as part of the activities of, or for the benefit of, a club, society or other organisation if the following conditions are met.
- (2) The conditions are—
- (a) that the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare, and
 - (b) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation.
- (3) Expressions used in this paragraph have the same meaning as in section 67.

Incidental recording for purposes of broadcast or cable programme

- 16 (1) A person who proposes to broadcast a recording of a performance, or include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by Part II shall be treated as having consent for the purposes of that Part for the making of a further recording for the purposes of the broadcast or cable programme.
- (2) That consent is subject to the condition that the further recording—
- (a) shall not be used for any other purpose, and
 - (b) shall be destroyed within 28 days of being first used for broadcasting the performance or including it in a cable programme service.
- (3) A recording made in accordance with this paragraph shall be treated as an illicit recording—
- (a) for the purposes of any use in breach of the condition mentioned in subparagraph (2)(a), and
 - (b) for all purposes after that condition or the condition mentioned in subparagraph (2)(b) is broken.
- (4) Expressions used in this paragraph have the same meaning as in section 68.

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Recordings for purposes of supervision and control of broadcasts and cable programmes

- 17 (1) The rights conferred by Part II are not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- [^{F9}(2) The rights conferred by Part II are not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
 - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
 - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) The rights conferred by Part II are not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
 - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.]

Textual Amendments

F9 Sch. 2 para. 17(2)(3) substituted (1.10.1996 for certain purposes and 1.4.1997 otherwise) by 1996 c. 55, s. 148(1), Sch. 10 Pt. III para. 32 (with s. 43(6)); S.I. 1996/2120, art. 4(1), Sch. 1; S.I. 1997/1005, art. 4

VALID FROM 31/10/2003

[^{F10}Recording for the purposes of time-shifting]

Textual Amendments

F10 Sch. 2 para. 17A and preceding heading inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 19(3) (with regs. 31-40)

- 17A (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—

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- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
 - (b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.
- (3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meaning as in section 70.

VALID FROM 31/10/2003

[^{F11}Photographs of broadcasts]

Textual Amendments

F11 Sch. 2 para. 17B and preceding heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 20(2)** (with regs. 31-40)

- 17B (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—
- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
 - (b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.
- (3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meaning as in section 71.

Free public showing or playing of broadcast or cable programme

- 18 (1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in—
- (a) the broadcast or cable programme, or
 - (b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.
- (2) The audience shall be treated as having paid for admission to a place—
- (a) if they have paid for admission to a place of which that place forms part; or

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- (b) if goods or services are supplied at that place (or a place of which it forms part)—
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme, or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following shall not be regarded as having paid for admission to a place—
 - (a) persons admitted as residents or inmates of the place;
 - (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by Part II in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.
- (5) Expressions used in this paragraph have the same meaning as in section 72.

[^{F12}Reception and re-transmission of broadcast in cable programme service]

Textual Amendments

F12 Crossheading substituted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 5** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**

- ^{F13}19 (1) This paragraph applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (3) Where—
 - (a) the inclusion is in pursuance of a relevant requirement, but
 - (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),

the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by Part II in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the

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broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.

- (4) Sub-paragraph (3) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that sub-paragraph) licensed by the owner of the rights conferred by Part II in relation to the performance or recording.
- (5) The Secretary of State may by order—
 - (a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
 - (b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.
- (6) Where the Secretary of State exercises the power conferred by sub-paragraph (5) (b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Expressions used in this paragraph have the same meaning as in section 73.]

Textual Amendments

F13 Sch. 2 para. 19 substituted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 5** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**

- [^{F14}19A(1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by Part II or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
 - (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
 - (4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.
 - (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.]

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Textual Amendments

F14 Sch. 2 para. 19A inserted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 6** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**

Provision of sub-titled copies of broadcast or cable programme

- 20 (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.
- (2) In this paragraph “designated body” means a body designated for the purposes of section 74 and other expressions used in this paragraph have the same meaning as in that section.

Recording of broadcast or cable programme for archival purposes

- 21 (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.
- (2) In this paragraph “designated class” and “designated body” means a class or body designated for the purposes of section 75 and other expressions used in this paragraph have the same meaning as in that section.

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