



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

[^{F1}CHAPTER 2

ECONOMIC RIGHTS]

^{x1} *Supplementary provisions with respect to delivery up and seizure*

^{x1}[^{F1}204] **Forfeiture of illicit recordings: England and Wales or Northern Ireland**

- (1) In England and Wales or Northern Ireland where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the illicit recordings.
- (2) For the purposes of this section “relevant offence” means—
 - (a) an offence under [^{F2}section 198(1) or (1A)](criminal liability for making or dealing with illicit recordings),
 - (b) an offence under the Trade Descriptions Act 1968 (c. 29),
[an offence under the Business Protection from Misleading Marketing
^{F3}(ba) Regulations 2008,
 - (bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or]
 - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made—
 - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court, or

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- (b) where no application for the forfeiture of the illicit recordings has been made under paragraph (a), by way of complaint to a magistrates' court.
- (4) On an application under this section, the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision—
- (a) in England and Wales, to the Crown Court, or
 - (b) in Northern Ireland, to the county court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1987/1675 (N.I. 26)) (statement of case)).
- (8) Subject to subsection (9), where any illicit recordings are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.]

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.
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Textual Amendments

- F1** S. 204A inserted (20.11.2002) by [2002 c. 25, s. 4](#); [S.I. 2002/2749, art. 2](#)
- F2** Words in s. 204A(2)(a) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 26\(4\)\(c\)](#) (with [regs. 31-40](#))
- F3** S. 204A(2)(ba)(bb) and word substituted (26.5.2008) for word by [The Consumer Protection from Unfair Trading Regulations 2008 \(S.I. 2008/1277\)](#), [reg. 1, Sch. 2 para. 42](#) (with [reg. 28\(2\)\(3\)](#))

Changes to legislation:

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