
STATUTORY INSTRUMENTS

2013 No. 1782

**The Copyright and Duration of Rights
in Performances Regulations 2013**

PART 3

Savings, transitional and review provisions

Introductory

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11.—(1) References in this Part to “commencement”, without more, are to the date on which these Regulations come into force.

(2) In this Part—

“the 1988 provisions” means the provisions of the Act as they stood immediately before commencement (including the provisions of Schedule 1 to the Act continuing the effect of earlier enactments); and

“the new provisions” means the provisions of the Act as amended by these Regulations.

(3) Expressions used in this Part which are defined for the purposes of Part 1 or Part 2 of the Act have the same meaning as in that Part.

Copyright

Copyright: interpretation

12.—(1) In the provisions of this Part relating to copyright—

(a) “existing” in relation to a work, means made before commencement; and

(b) “existing copyright work” means a work in which copyright subsisted immediately before commencement.

(2) For the purposes of those provisions a work of which the making extended over a period shall be taken to have been made when its making was completed.

(3) References in those provisions to “moral rights” are to the rights conferred by Chapter IV of Part I of the Act.

Duration of copyright: general saving

13. Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 1988 provisions if that date is later than the date on which copyright would expire under the new provisions.

Duration of copyright: application of new provisions

14. The new provisions relating to duration of copyright in sound recordings and works comprised in works of co-authorship apply—

- (a) to sound recordings and works of co-authorship made after commencement;
- (b) to existing sound recordings and works of co-authorship which first qualify for copyright protection after commencement;
- (c) to existing sound recordings in which copyright subsisted immediately before commencement;
- (d) to works of co-authorship of which either or both the musical work and the literary work were existing copyright works; and
- (e) to works of co-authorship of which the musical work or the literary work were on commencement protected as copyright works in another EEA state under legislation relating to copyright or related rights.

Extended and revived copyright

15. In the following provisions of this Part—

- (a) “extended copyright” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 1988 provisions; and
- (b) “revived copyright” means any copyright in a musical or literary work comprised in a work of co-authorship which subsists by virtue of the new provisions after having expired under the 1988 provisions or any earlier enactment relating to copyright.

Ownership of extended copyright

16.—(1) The person who is the owner of the copyright in a sound recording or in a work comprised in a work of co-authorship immediately before commencement is as from commencement the owner of any extended copyright in the sound recording or work, subject as follows.

(2) If he or she is entitled to copyright for a period less than the whole of the copyright period under the 1988 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period.

Ownership of revived copyright in works of co-authorship

17.—(1) The person who was the owner of the copyright in a musical or literary work comprised in the work of co-authorship immediately before it expired (the “former copyright owner”) is as from commencement the owner of any revived copyright in the work, subject as follows.

(2) If the former copyright owner has died before commencement, or in the case of a legal person has ceased to exist before commencement, the revived copyright shall vest in the author of the work or his or her personal representatives.

(3) Where revived copyright vests in personal representatives by virtue of paragraph (2), it shall be held by them for the benefit of the person who would have been entitled to it had it been vested in the author immediately before his or her death and had devolved as part of his or her estate.

Prospective ownership of extended or revived copyright

18.—(1) Where by an agreement made before commencement in relation to extended or revived copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended or revived copyright (wholly or partially) to another person, then if, on commencement the assignee or another person claiming under the assignee would be

entitled as against all other persons to require the copyright to be vested in him or her, the copyright shall vest in the assignee or his or her successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended or revived copyright is binding on every successor in title to the prospective owner's interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser and references in Part 1 of the Act to do anything with, or without, the licence of the copyright owner shall be construed accordingly.

(3) In paragraph (2) "prospective owner" includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in paragraph (1).

Extended copyright: existing licences, agreements, &c.

19.—(1) Subject to sections 191HA(5) and 191HB(7) and (9), any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Copyright Tribunal which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

Revived copyright: exercise of moral rights

20.—(1) The following provisions have effect with respect to the exercise of moral rights in relation to a work comprised in a work of co-authorship in which there is revived copyright.

(2) Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright shall continue to have effect during the period of revived copyright.

(3) Moral rights are exercisable after commencement by the author of a work as with any other copyright work.

(4) Where the author died before commencement—

- (a) the rights conferred by—
 - (i) section 77 (right to identification as author or director); or
 - (ii) section 80 (right to object to derogatory treatment of work),are exercisable after commencement by his personal representatives, and

- (b) any infringement after commencement of the right conferred by section 84 (false attribution) is actionable by his personal representatives.

(5) Any damages recovered by personal representatives by virtue of this regulation in respect of an infringement after a person's death shall devolve as part of his or her estate as if the right of action had subsisted and been vested in him or her immediately before his or her death.

(6) Nothing in these Regulations shall be construed as causing a moral right to be exercisable if, or to the extent that, the right was excluded by virtue of paragraph 23 of Schedule 1 on the commencement of the Act or would have been so excluded if copyright had not previously expired.

Revived copyright: saving for acts of exploitation when work in public domain, &c.

21.—(1) No act done before commencement shall be regarded as infringing revived copyright in a work.

(2) It is not an infringement of revived copyright in a work—

(a) to do anything after commencement in pursuance of arrangements made before commencement at a time when copyright did not subsist in the work, or

(b) to issue to the public after commencement copies of the work made before commencement at a time when copyright did not subsist in the work.

(3) It is not an infringement of revived copyright in a work to do anything after commencement in relation to a literary, dramatic or musical work or a film made before commencement or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work if—

(a) the copy or adaptation was made before commencement at a time when copyright did not subsist in the work in which revived copyright subsists, or

(b) the copy or adaptation was made in pursuance of arrangements made before commencement at a time when copyright did not subsist in the work in which revived copyright subsists.

(4) It is not an infringement of revived copyright in a work to do after commencement anything which is a restricted act in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this regulation “arrangements” means arrangements for the exploitation of the work in question.

(6) It is not an infringement of any moral right to do anything which by virtue of this regulation is not an infringement of copyright.

Rights in performances

Rights in performances: interpretation

22.—(1) In the provisions of this Part relating to rights in performances—

“existing protected performance” means a performance in a sound recording in relation to which rights under Part II of the Act (rights in performances) subsisted immediately before commencement,

“a new right” means a right arising by virtue of regulation 9 in relation to an assignment of a performer’s property rights in a sound recording.

References in this Part to performers’ rights are to the rights given by section 180(1)(a) of the Act.

Rights in performances: application of new provisions

23. The new provisions relating to the duration of performers’ rights in sound recordings and rights in relation to an assignment of performers’ rights in a sound recording apply—

(a) to performances taking place after commencement;

(b) to existing performances which first qualify for protection under Part II of the 1988 Act after commencement; and

(c) to existing protected performances.

Extended performance rights

24. In the following provisions of this Part “extended performance rights” means rights under Part II of the Act which subsist by virtue of the new provisions after the date on which they would have expired under the 1988 provisions.

Entitlement to extended performance rights and new rights

25.—(1) Any extended performance rights and any new rights are exercisable as from commencement by the performer or (if he or she has died) the person entitled to exercise those rights by virtue of section 191B(1) or 192A of the Act.

(2) Any remuneration or damages received by a person’s personal representatives by virtue of a right conferred on them by paragraph (1) shall devolve as part of that person’s estate as if the right had subsisted and been vested in him or her immediately before his or her death.

Extended performance rights: existing consents, agreements, &c.

26. Subject to the provisions of sections 191HA(5) and 191HB(7) and (9), any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—

- (a) subsists immediately before commencement, and
- (b) is not to expire before the end of the period for which rights under Part II of the Act subsist in relation to that performance,

shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

Review

27.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of regulations 4 to 26,
- (b) set out the conclusions of the review in a report, and
- (c) lay the report before Parliament.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (which is implemented by means of regulations 4 to 26) is implemented in other Member States and must in particular—

- (a) consider whether and if so, to what extent certain producers should be subject to the obligation to pay the annual payment referred to in section 191HB of the Act (as inserted by regulation 9) having regard to the provisions of Recital (12) of the Directive, and
- (b) consider whether to implement the provision set out in Article 10a, paragraph 2 of [Directive 2006/116/EC\(1\)](#) as inserted by Article 1(4) of the Directive.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) In this Regulation—

(1) OJ No L 372, 27.12.2006, p12.

“Directive” means Directive 2011/77/EU(2) of the European Parliament and of the Council of 27th September 2011 amending Directive 2006/116/EC on the term of protection of copyright and related rights;

“Review period” means—

- (a) the period of five years beginning with the day on which regulations 4 to 26 come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is laid.

(2) OJ No L 265, 11.10.2011, p1.