

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 5th February 2014 and published on 10th February 2014 (ISBN 978-0-11-110926-7). It is being issued free of charge to all known recipients of that Statutory Instrument.

Draft Regulations laid before Parliament under paragraph 7(4) of Schedule A1 to the Copyright, Designs and Patents Act 1988, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

COPYRIGHT

The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014

Made - - - - *****
Coming into force - - *6th April 2014*

A draft of the Regulations has been laid before and approved by each House of Parliament under paragraph 7(4) of Schedule A1 to the Copyright, Designs and Patents Act 1988(1).

The Secretary of State, in exercise of the powers conferred by section 116(5) of and paragraphs 1 to 7 of Schedule A1 to that Act, makes the following Regulations:

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 and shall come into force on 6th April 2014.

Interpretation

2. In these Regulations—

“the Act” means the Copyright, Designs and Patents Act 1988;

“code of practice” includes any part of a code of practice;

(1) 1988 c.48 as amended by the Enterprise and Regulatory Reform Act 2013 c.24, s77(4), Schedule 22 Part 1, paragraph 1 which inserted Schedule A1 into the Act.

“code reviewer” means a person who has been appointed by the Secretary of State under regulation 6;

“Comptroller” shall have the same meaning as in the Patents and Designs Act 1907⁽²⁾;

“Extended Collective Licensing Scheme” means a collective licensing scheme under which a relevant licensing body which is authorised by the Secretary of State may grant licences in respect of—

- (a) copyright works in which copyright is owned by non-member right holders; or
- (b) performers’ rights where the acts restricted in relation to the performance are owned by non-member right holders;

“First-tier Tribunal” means the First-tier Tribunal established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007⁽³⁾;

“licensing code ombudsman” means a person who has been appointed by the Secretary of State under regulation 7;

“micro-business” means a business with fewer than ten employees and which has a turnover or balance sheet total of less than 2 million Euros per annum;

“non-member right holder” means a right holder who is represented by the relevant licensing body under an Extended Collective Licensing Scheme but who is not a member of the relevant licensing body and whose rights are not the subject of an express contractual agreement with the relevant licensing body for the licensing of copyright works or performers’ rights;

“potential licensee” means any person who has communicated with the relevant licensing body and expressed an interest in being granted a licence in respect of a copyright work or a performer’s right;

“relevant licensing body” means any body that is a licensing body within the meaning of section 116(2) of the Act and which—

- (a) is authorised by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose; and
- (b) is either owned or controlled by its members or organised on a not for profit basis;

“relevant person” means a director, manager or similar officer of a relevant licensing body or, where the body’s affairs are managed by its members, a member;

“right holder” means the owner of the copyright in a copyright work or of a performer’s right and includes an exclusive licensee of the copyright owner;

“specified criteria” means the criteria set out in the Schedule;

“transparent” means that, in dealing with any of its members, licensees or potential licensees, the relevant licensing body provides to that member, licensee or potential licensee any information it holds which may reasonably be considered to be relevant to that particular member, licensee or potential licensee;

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom under section 1 of the Banking and Financial Dealings Act 1971⁽⁴⁾.

(2) 1907 c.29 section 62(2) as amended by the Trade Marks Act 1994 (c. 26) section 106(1) and Schedule 4 paragraph 2(2)(b).

(3) 2007 c.15.

(4) 1971 c.80.

PART 2

Regulation of relevant licensing bodies

Notice of non-compliance and direction to adopt a code of practice

3.—(1) If the relevant circumstances are met, the Secretary of State may direct a relevant licensing body to adopt and publish a code of practice that complies with the specified criteria.

(2) For the purposes of paragraph (1), the relevant circumstances are—

- (a) the relevant licensing body is not a micro-business;
- (b) that in the opinion of the Secretary of State the relevant licensing body either—
 - (i) has no code of practice; or
 - (ii) has a code of practice which does not comply in material respects with the specified criteria; and
- (c) where sub-paragraph (b)(ii) applies, that the Secretary of State has notified the relevant licensing body that its code of practice does not comply in material respects with the specified criteria and the relevant licensing body has not amended, within the period of 49 days from the date of the notification, its code of practice to comply in material respects with the specified criteria.

(3) In deciding whether or not any code of practice of a relevant licensing body complies in material respects with the specified criteria under paragraph (2)(b)(ii) or regulation 4, the Secretary of State may have regard to a report produced by a code reviewer.

(4) The Secretary of State may request a code reviewer to produce a report in order to assist him in making his decision under paragraph (3).

(5) A notification under paragraph (2)(c) must be given by—

- (a) serving a copy on the relevant licensing body; and
- (b) publishing the notification in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which the notification relates to the attention of persons likely to be affected by them.

Effect of a direction

4.—(1) The relevant licensing body must, within 49 days of the date on which a direction under regulation 3 is made, notify to the Secretary of State a code of practice that complies with the specified criteria and that it proposes to adopt in accordance with the direction.

(2) Following receipt of a code of practice notified in accordance with paragraph (1), the Secretary of State shall inform the relevant licensing body in writing that the code of practice notified either—

- (a) meets the specified criteria and is approved by the Secretary of State; or
- (b) does not meet the specified criteria and that the Secretary of State intends to impose a code of practice on the relevant licensing body.

(3) Once its code of practice has been approved by the Secretary of State and the approval notified to the relevant licensing body, the body shall within 7 days of notification adopt the approved code of practice and operate its licensing activities in accordance with that code of practice.

Imposition of code of practice

5.—(1) The Secretary of State may impose a code of practice if he—

- (a) is satisfied that the code of practice notified under regulation 4(1) does not meet the specified criteria or that the relevant licensing body has failed to adopt an approved code of practice in accordance regulation 4(3);
 - (b) gives notice to the relevant licensing body of the code of practice to be imposed upon it; and
 - (c) has considered any representations made by the relevant licensing body in accordance with the notice and not withdrawn.
- (2) The notice must—
- (a) state the reasons for the proposed refusal of approval for any code of practice notified by the relevant licensing body;
 - (b) contain the code of practice that the Secretary of State proposes to impose on the relevant licensing body; and
 - (c) state the period (not less than 14 days starting with the date of delivery of the notice) within which representations may be made in relation to the proposed imposition of the code of practice.
- (3) Where the Secretary of State decides to impose the code of practice contained in the notice, the Secretary of State shall notify the relevant licensing body and give it a written statement of reasons for the decision together with the date from which the approved code of practice is to have effect as the code of practice adopted by the body (the “effective date”).
- (4) The relevant licensing body shall operate its licensing activities in accordance with the imposed code with effect from the effective date.

Code reviewer

- 6.—(1) The Secretary of State may appoint a suitably qualified person as code reviewer to review and report to the Secretary of State, when requested to do so by the Secretary of State, on the codes of practice adopted by the relevant licensing bodies, including how they relate to the specified criteria, and on compliance with the codes of practice.
- (2) Before making an appointment under paragraph (1) the Secretary of State shall consult with those persons whom the Secretary of State considers to represent the interests of relevant licensing bodies, licensees, the persons on whose behalf a relevant licensing body is authorised to negotiate or grant licences and the Comptroller.
- (3) The code reviewer may serve notice on any relevant licensing body requiring that relevant licensing body to provide information, documents or assistance to the code reviewer for the purposes of a review or report and may copy any information or documents provided in accordance with the notice.
- (4) A relevant licensing body shall provide the code reviewer with any information, documents or assistance requested under paragraph (3) within 14 days of receipt of the request.
- (5) Any reference in this regulation or in regulation 7 to the provision of information or of a document includes a reference to the provision of a legible and intelligible copy of information recorded otherwise than in legible form.
- (6) The Secretary of State may pay the reasonable expenses and allowances of the code reviewer in respect of any work which the Secretary of State requests the code reviewer to carry out under these Regulations.

Licensing code ombudsman

7.—(1) The Secretary of State may appoint a suitably qualified person as licensing code ombudsman to investigate and determine disputes about a relevant licensing body's compliance with its code of practice.

(2) A relevant licensing body, licensee or a person on whose behalf a relevant licensing body is authorised to negotiate may refer a dispute about a relevant licensing body's compliance with its code of practice or other matter to the licensing code ombudsman.

(3) The licensing code ombudsman may serve notice on any relevant licensing body requiring it to provide to the licensing code ombudsman any information, documents or assistance for the purposes of investigating a dispute referred to in paragraph (1) and copy any document or information provided in accordance with the notice.

(4) A relevant licensing body shall provide the licensing code ombudsman with any information, documents or assistance requested under paragraph (3) within 14 days of receipt of the request.

(5) A relevant licensing body shall comply with a determination of the licensing code ombudsman.

(6) The Secretary of State may pay the reasonable expenses and allowances of the licensing code ombudsman in respect of any work which the licensing code ombudsman carries out under these Regulations.

Recovery of fees by the Secretary of State

8.—(1) Subject to paragraph (2), the Secretary of State may require a relevant licensing body to pay to the Secretary of State a fee to reimburse the Secretary of State the cost of administering the operation of these Regulations.

(2) The aggregate amount of fees recovered from the relevant licensing bodies under paragraph (1) must not be more than the cost to the Secretary of State of administering the operation of these Regulations.

(3) The relevant licensing body shall pay the fee within 24 days of the date on which the relevant licensing body is notified of the fee.

PART 3

Information and financial penalties

Secretary of State's powers to request information

9.—(1) The Secretary of State may serve notice on any relevant licensing body requiring it to supply to the Secretary of State for any purpose related to its licensing activity such information as may be specified or described in the notice, and to supply it at a time and place and in a form and manner so specified.

(2) A relevant licensing body shall supply the Secretary of State with information requested under paragraph (1) within 14 days of receipt of the request.

(3) The Secretary of State may, for a purpose described in paragraph (1), copy any document or information provided.

(4) Any reference in this regulation to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

Financial penalties

10.—(1) The Secretary of State may impose a financial penalty on a relevant licensing body or a relevant person if the Secretary of State is satisfied that the relevant licensing body has failed to comply with its obligations under—

- (a) regulation 4(3) (adoption of an approved code of practice), 5(4) (compliance with an imposed code of practice) or 7(5) (compliance with determination of the licensing code ombudsman); or
 - (b) regulation 4(1) (notification of code of practice), 6(4) (supply of information to code reviewer), 7(4) (supply of information to licensing code ombudsman) or 9(2) (supply of information in accordance with a requirement imposed by the Secretary of State).
- (2) Any financial penalty imposed under paragraph (1)(a) shall not exceed £50,000.
- (3) Any financial penalty imposed under paragraphs (1)(b) or (2), may comprise—
- (a) a sum equivalent to level 5 on the standard scale; together with
 - (b) a daily default fine equivalent to one tenth of level 5 on the standard scale for each day until the required action is taken,

but the financial penalty shall not exceed £50,000 in total.

Imposition of a financial penalty: main procedural requirements

11.—(1) As soon as practicable after imposing a financial penalty, the Secretary of State must give notice of the financial penalty.

- (2) The notice of the financial penalty must state —
- (a) that the Secretary of State has imposed a financial penalty on the relevant licensing body or a relevant person,
 - (b) the amount of the financial penalty,
 - (c) the acts or omissions which the Secretary of State considers constitute the contravention,
 - (d) any other facts which the Secretary of State considers justify the imposition of a financial penalty; and
 - (e) the period (not less than 28 days from the date of service of the notice on the relevant licensing body or relevant person) within which the financial penalty is to be paid.
- (3) A notice under this regulation must be given by—
- (a) serving a copy of the notice on the relevant licensing body and any relevant person upon whom a financial penalty is imposed, and
 - (b) publishing the notice in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

Appeals

12.—(1) If a relevant licensing body is aggrieved by the imposition of a code of practice or by the imposition or amount of a financial penalty, the relevant licensing body may appeal to the First-tier Tribunal.

(2) If a relevant person is aggrieved by the imposition or amount of a financial penalty, the relevant person may appeal to the First-tier Tribunal.

(3) On an appeal under this regulation, the First-tier Tribunal may make such order as it considers appropriate.

(4) Where the appeal is against the imposition of a code of practice, the code shall continue in force until the First-tier Tribunal has determined the appeal.

(5) Where an appeal has been made under this regulation, the financial penalty may not be required to be paid until the appeal has been determined, withdrawn or otherwise dealt with.

Calculating time

13. If the time specified in these Regulations for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

Date

Name
Parliamentary Under Secretary of State for
Business, Innovation and Skills
Department for Business, Innovation and Skills

SCHEDULE

Regulation 2

SPECIFIED CRITERIA

1. The specified criteria are set out in paragraphs 2 – 13 of this Schedule.

Obligations to rights holders, members and licensees

2. The code of practice shall require the relevant licensing body to—
 - (a) offer membership to all relevant right holders in the sector it manages;
 - (b) have rules or a constitution that enables members and non-member right holders to withdraw their rights on reasonable notice;
 - (c) offer fair and balanced representation of those right holders who are members of the relevant licensing body in the internal decision making process of the relevant licensing body;
 - (d) provide a copy of the rules or constitution to members and to those potential members who have identified themselves and requested a copy;
 - (e) act in the best interests of its members as a whole;
 - (f) treat all members and non-member right holders fairly, honestly, reasonably, impartially, courteously and in accordance with its rules and membership agreement;
 - (g) ensure that its dealings with all members are transparent;
 - (h) treat its licensees and potential licensees fairly, honestly, impartially, courteously and in accordance with its rules and any licence agreement;
 - (i) ensure that its dealings with licensees or potential licensees are transparent;
 - (j) consult and negotiate fairly, reasonably and proportionately in relation to the terms and conditions of a new or significantly amended licensing scheme;
 - (k) provide to licensees, and to any potential licensees who have requested it, information about its licensing schemes, their terms and conditions and how it collects royalties;
 - (l) ensure that all licences and licensing schemes are drafted in plain English and are accompanied by suitable explanatory material.

Requirements imposed on licensees

3. The code of practice shall set out the requirements that the relevant licensing body must impose on licensees including—
 - (a) to respect the rights of creators and right holders including their right to receive fair payment when their works are used; and
 - (b) that copyright material is to be used only in accordance with the terms and conditions of a licence.

Conduct of employees, agents and representatives

4. The code of practice shall require the relevant licensing body to ensure that—
 - (a) its staff training procedures for employees, agents and representatives include training about conduct that complies with the obligations to members and licensees set out in this Schedule;
 - (b) its staff provide licensees and potential licensees with clear information, including information about cooling off periods which may apply to new licences; and

- (c) its employees and agents are aware of procedures for handling complaints and resolving disputes and are able to explain those procedures to members, non-member right holders, licensees and the general public in plain English.

Information and transparency – monitoring and reporting requirements

- 5. The code of practice shall state that the relevant licensing body shall—
 - (a) inform members, licensees and potential licensees, on request, about the scope of its repertoire, any existing reciprocal representation and the territorial scope of its mandate;
 - (b) maintain, and make available to members on request, a clear distribution policy that includes the basis for calculating remuneration and the frequency of payments, together with clear information about deductions and what they are for;
 - (c) provide details of tariffs in a uniform format on its website;
 - (d) provide details of its code of practice and complaints procedure, accessible via a link on the website homepage;
 - (e) undertake that all information provided is kept up to date, is readily accessible and written in clear language that can be easily understood by licensees, potential licensees and members.

Reporting requirements

- 6. The code of practice shall require the relevant licensing body to publish an annual report which includes—
 - (a) the number of right holders represented, whether as members or through representative arrangements including, where possible and if applicable, an estimate of the number of non-member right holders represented by any Extended Collective Licensing Scheme;
 - (b) the distribution policy;
 - (c) total revenue from licences granted for its repertoire during the reporting period;
 - (d) total costs incurred in administering licences and licensing schemes;
 - (e) itemised costs incurred in administering licences and licensing schemes;
 - (f) allocation and distribution of payments of revenues received and extent to which these are compliant with its distribution policy;
 - (g) procedures for the appointment of directors of or, where appropriate, managers or similar officers in the relevant licensing body and details of any appointment during the course of the reporting period;
 - (h) details of remuneration of each director of or, where appropriate, managers or similar officers in the relevant licensing body during the reporting period; and
 - (i) a report regarding compliance with its code of practice over the past year, including data on total level of complaints and how they were dealt with.

Resolution of complaints and disputes

7. The code of practice shall provide that the relevant licensing body shall adopt and publicise procedures for dealing with complaints from members, non-member right holders, licensees and potential licensees together with arrangements for the submission of any disputes, including complaints which cannot be resolved by the complaints procedure, to the licensing code ombudsman.

- 8. The complaints procedure shall—
 - (a) define the categories of complaints and explain how each will be dealt with;

- (b) ensure information on how to make complaints is readily accessible to members, licensees and potential licensees;
- (c) provide reasonable assistance to a complainant when forming and lodging a complaint;
- (d) specify who will handle a complaint on behalf of the relevant licensing body;
- (e) indicate the timeframe for the handling of a complaint;
- (f) provide that the relevant licensing body must give a written response to each complaint made in writing;
- (g) provide that the relevant licensing body must give a written decision where appropriate for each complaint and give reasons for that decision;
- (h) ensure that the relevant licensing body makes adequate resources available for the purpose of responding to complaints; and
- (i) provide that the relevant licensing body must regularly review its complaint handling procedure and dispute resolution procedures to ensure they comply with the specified criteria.

Ombudsman Scheme

9. The code of practice shall provide that the licensing code ombudsman shall be the final arbiter on disputes between the relevant licensing body and its members or licensees in relation to those provisions of the relevant licensing body's code of practice the inclusion of which is required by these specified criteria.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of the Regulations sets out the circumstances in which the Secretary of State can direct a relevant licensing body to adopt a code of practice, which satisfies the specified criteria set out in the Schedule, or impose such a code of practice on a relevant licensing body.

Part 3 of the Regulations sets out the powers of the Secretary of State concerning information and financial penalties.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport NP10 8QQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.