

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations appoint the Comptroller-General of Patents, Designs and Trade Marks as the authorising body with the power to grant licences of orphan works in respect of which a diligent search has been carried out in accordance with the requirements of regulation 4.

“Relevant work”, “right holder” and “orphan work” are defined in regulation 3.

Regulation 4 provides that a diligent search requires a reasonable search of the relevant sources to identify the right holder of the relevant work and provides that the relevant sources must, as a minimum, include the register maintained by the authorising body, any relevant databases maintained by the Office for Harmonization in the Internal Market and, where there is no record of the relevant work on the register or in the databases, any sources listed for that category of work in Part 2 of Schedule ZA1 to the Copyright, Designs and Patents Act 1988. The authorising body has the power to issue guidance on what sources may additionally be relevant for a particular relevant work.

An orphan licensee may make use of an appropriate diligent search that has already been carried out if the search is valid or may carry out a new diligent search.

Regulation 5 requires the authorising body to maintain a register of orphan works.

Regulation 6(2) sets out the restrictions which apply to an orphan licence and regulation 6(5) sets out the circumstances in which an authorising body may refuse to grant an orphan licence.

Regulation 7 permits any person to make reasonable use of an orphan work for purposes which are incidental to the application for an orphan licence, the processing of an application or the maintenance of the orphan works register.

Regulation 8 sets out the circumstances in which the authorising body may renew an orphan licence and regulation 10 provides a framework for the computation of the licence fee.

Regulation 11 requires the authorising body to publish an annual report.

Regulation 12 sets out the rights of an identified right holder and regulation 13 sets out how the authorising body is to deal with unclaimed licence fees.

Regulation 14 sets out the circumstances in which an identified right holder or an orphan licensee may appeal to the First-tier Tribunal or to the Copyright Tribunal.

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.