

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Miscellaneous and General

Copyright and rights in performances

Section 78: Penalties under provision implementing Directive on term of protection

537. This section ensures that when section 2(2) of the ECA 1972 is used to implement EU Directive 2011/77/EU on the term of protection of copyright and certain related rights the restriction to criminal penalties as detailed in paragraph 1 of Schedule 2 to the ECA 1972 does not apply and the current level of criminal penalties can be maintained.
538. The primary function of the Directive is to extend the copyright term for sound recordings and performers' rights from 50 to 70 years. The impact of extending the duration of copyright term in the way proposed by the Directive will be to criminalise acts which under the current law would be lawful.
539. Current penalties for copyright infringement exceed the limits provided for implementation under the ECA 1972 . The current maximum terms of imprisonment for the most serious cases of copyright infringement are set by section 107 of the CDPA 1988 (as amended by the Copyright etc. Trade Marks (Offences and Enforcement) Act 2002) at ten years on indictment and six months for summary offences. According to paragraph 1 of Schedule 2 to the ECA 1972 the penalties which can be imposed by regulations which are made under that Act are restricted. The maximum term of imprisonment that can be applied is three months for summary offences and two years for those on indictment.