
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Copyright, Designs and Patents Act 1988 (“the Act”) and implement the provisions of Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending [Directive 2006/116/EC](#) on the term of protection of copyright and certain related rights (OJ No L265, 11.10.2011, p. 1).

Regulation 4 inserts in section 10A of the Act a new definition of a work of co-authorship as a musical composition with words where the author of the music and the author of the lyrics have collaborated together to produce the work.

Regulation 5 amends section 12(8) of the Act to include a reference to a work of co-authorship so as to provide that copyright in the works comprised in a work of co-authorship will expire 70 years after the death of the last surviving author.

Regulation 6 amends section 13A of the Act to extend the period of copyright in a sound recording which is published or made available to the public from 50 years to 70 years.

Regulation 7 amends section 182D of the Act to provide that where copyright in a sound recording has expired pursuant to the exercise by the performer of the rights conferred under new section 191HA inserted by regulation 9, the responsibility for payment of equitable remuneration should be discharged by the user i.e. the person who plays the sound recording in public or communicates the sound recording to the public, in place of the producer.

Regulation 8 amends section 191 of the Act to extend the duration of a performer’s rights in a sound recording which is released from 50 years to 70 years.

Regulation 9 inserts new sections 191HA and 191HB in the Act:

New section 191HA provides that where a performer has assigned the reproduction, distribution and making available rights in a sound recording to the producer, the performer may serve notice to terminate that assignment at the expiry of the 50 year period (as defined in sub-section (7)) if the producer has failed to sell the sound recording in sufficient quantities or to make it available on the internet. If at the end of the notice period the producer has failed to exploit the recording, the agreement terminates and the producer’s copyright in the sound recording expires.

New section 191HB provides that where a performer who has assigned such rights to a producer in consideration of a single payment (as opposed to a recurring payment), with effect from the end of the 50 year period, the performer is entitled to receive an annual payment until the expiry of the copyright in the sound recording. The producer or, where relevant, the exclusive licensee is under an obligation to pay to a Collecting Society, for distribution to the performer, 20% of the gross revenue received in respect of sales and downloads of the sound recording. Any disputes regarding the sum payable may be referred by the performer to the Copyright Tribunal. Subsection (9) provides that where a performer is entitled to recurring payments under an assignment of rights, the producer is not entitled to deduct sums from such payments with effect from the end of the 50 year period notwithstanding any provision in the agreement permitting such deductions.

Regulation 10 amends section 192A so as provide that the rights conferred on the performer under new sections 191HA and 191HB are transmissible on the death of the performer.

Part 3 of the Regulations (which contains transitional provisions and savings), provides—

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- (a) for the new provisions relating to duration of copyright in sound recordings to apply not only to sound recordings made after 1st November 2013 but also to sound recordings in which copyright subsisted immediately before that date (regulations 12 and 14);
- (b) for the saving of any period of copyright which would be longer than that to which a work might otherwise be entitled under the Regulations (regulation 13);
- (c) for those Regulations which increase the duration of copyright for works comprised in a work of co-authorship to 70 years from the death of the last surviving author, to apply not only to works made after 1st November 2013 but also to works made before that date in which copyright continues to subsist on 31st October 2013, and further to apply to works where the copyright in either the musical work or the literary work expired before that date but where the copyright in the related literary work or musical work continued to subsist on 31st October 2013 under the 1988 provisions or which were protected on 1st November 2013 under legislation relating to copyright or related rights in any other EEA State (regulation 14 and 15);
- (d) for the determination of the ownership of both extended and revived copyright (regulation 16, 17 and 18);
- (e) in relation to extended copyright, subject to the provisions of sections 191HA and 191HB, for any licence, term or condition of an agreement or waiver or assertion of moral rights, or any such licence, term or condition imposed by the copyright tribunal, effective throughout the duration of the original period of copyright to continue throughout the period of extended copyright (regulation 19);
- (f) who is to exercise moral rights in respect of a revived copyright in a work of co-authorship (regulation 20);
- (g) a saving in respect of arrangements made before 1st November 2013 so that any acts done after 1st November 2013 in pursuance of such arrangements are not to be regarded as infringements of revived copyright (regulation 21);
- (h) a saving in respect of the issue to the public after 1st November 2013 of copies of a revived copyright work made before that date and at a time when copyright in the revived work had expired (regulation 21);
- (i) a saving for acts done in respect of revived copyright works after 1st November 2013, where the owner of the right cannot be found by reasonable inquiry (regulation 21);
- (j) a saving for acts done after 1st November 2013 in respect of works which contain a copy of, or is an adaptation of a revived work which was made before 1st November 2013 or in pursuance of arrangements before that date (regulation 21);
- (k) for the new provisions relating to the duration of performers' rights in sound recordings and in relation to an assignment of performers' rights in a sound recording to a producer to apply to performances taking place after 1st November 2013 and to performances in a sound recording in which rights under Part II of the Act subsisted immediately before that date (regulation 23);
- (l) for the determination of ownership of extended performance rights and new rights (regulation 25);
- (m) in relation to extended performance rights, for savings corresponding to those made in respect of extended copyright works (regulation 26).

Regulation 27 imposes a duty on the Secretary of State to carry out a review of the regulations before 1st November 2018 and to prepare a report to Parliament of the conclusions of the review.

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,

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Newport, NP10 8QQ and is annexed to the Explanatory Memorandum (together with a transposition note) which is available alongside the instrument on www.legislation.gov.uk