

EXPLANATORY MEMORANDUM TO

THE COPYRIGHT AND DURATION OF RIGHTS IN PERFORMANCES
(AMENDMENT) REGULATIONS 2014

2014 No. 434

1. This Explanatory Memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department of Business, Innovation and Skills (BIS), and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the Instrument**

- 2.1 This instrument amends the Copyright, Designs and Patents Act 1988 to correct a defect in the Copyright and Duration of Rights in Performances Regulations 2013 identified by the Joint Committee on Statutory Instruments.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The amendment to section 191HA(1) of the Copyright, Designs and Patents Act 1988 corrects a defect in the drafting of the Copyright and Duration of Rights in Performances Regulations 2013 (SI 2013/1782), identified by the Joint Committee in its 11th Report of Session 2013-14.

- 4. Legislative Context**

- 4.1 The Copyright and Duration of Rights in Performances Regulations 2013 implemented EU Directive 2011/77/EU amending Directive 2006/11/EC on the term of protection of copyright and certain related rights. They did so by amending the Copyright, Designs and Patents Act 1988. The Regulations were made under the powers contained in section 2(2) of the European Communities Act 1972 and section 78 of the Enterprise and Regulatory Reform Act 2013.
- 4.2 Regulation 9 inserted into the Act sections 191HA and 191HB. Subsection (1) of section 191HA states that the section applies "where a performer has assigned the following rights concerning a sound recording to the producer of the sound recording - (a) reproduction, distribution and making available rights, or (b) performer's property rights".
- 4.3 Subsections (2) and (3) refer to the performer giving notice in writing to the producer of the performer's intention to terminate "the agreement", and subsection (4) states when "the agreement" terminates. Although subsection (1) refers to an assignment there is no mention of an "agreement" referred to in later subsections. The Copyright and Duration of Rights in Performances (Amendment) Regulations 2014 correct this defect.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom

6. European Convention on Human Rights

6.1 The Viscount Younger of Leckie, Parliamentary Under Secretary of State for Intellectual Property has made the following statement regarding human rights:

“In my view the provisions of the Copyright and Duration of Rights in Performances (Amendment) Regulations 2014 are compatible with the Convention rights”

7. Policy Background

7.1 Under the original Directive 2006/116/EC as implemented, the length of the term of copyright in sound recordings and performers` rights in sound recordings was set at 50 years from the date of publication. Directive 2011/77/EU extended this term of protection to 70 years from the date of publication. The Directive also contains elements that aim to ensure that the benefits of the extension reach performers and musicians.

7.2 The deadline for transposition of the Directive by EU Member States was 1st November 2013; the Copyright and Duration of Rights in Performances Regulations 2013 came into force on that date.

8. Consultation Outcome

8.1 This instrument corrects a drafting defect identified by the Joint Committee on Statutory Instruments and no formal consultation has taken place.

8.2 A Government consultation was published on the Copyright and Duration of Rights in Performances Regulations 2013 that invited comment on the detail of transposition of the Directive into UK law. The responses received demonstrated general support for the Government`s approach to implementation of the Directive. In taking forward the implementing Regulations the Government considered the responses to the specific questions asked by the consultation.

9. Guidance

9.1 The Intellectual Property Office will publicise that this corrective instrument has been made through its website and also by notifying users directly by email.

10. Impact Assessment

10.1 An Impact Assessment was produced in respect of the Copyright and Duration of Rights in Performances Regulations 2013 and was provided with the corresponding Explanatory Memorandum.

11. Regulating small business

11.1 This type of European legislative measure is not in scope for micro-business exemptions.

12. Monitoring & review

12.1 No review of the correction is envisaged.

13. Contact

13.1 Nick Ashworth at the Intellectual Property Office, an executive agency of the Department of Business, Innovation and Skills, can answer any queries regarding the instrument. Contact: 01633 814397 and e-mail: nick.ashworth@ipo.gov.uk