

2015 No. 795

COPYRIGHT

The Copyright (Cayman Islands) Order 2015

Made - - - - *19th March 2015*

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 19th day of March 2015

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by and with the advice of Her Privy Council, in exercise of the powers conferred on Her by section 157(2) of the Copyright, Designs and Patents Act 1988(a), makes the following Order:

Citation and commencement

1. This Order may be cited as the Copyright (Cayman Islands) Order 2015 and comes into force on such date as the Governor of the Cayman Islands may appoint by proclamation published in the Gazette of the Cayman Islands.

Extension of Part 1 of the Copyright, Designs and Patents Act 1988

2. Part 1 of the Copyright, Designs and Patents Act 1988(b) ("the 1988 Act") extends to the Cayman Islands subject to the exclusions specified in Part 1 of the Schedule and the modifications set out in Part 2 of the Schedule.

Richard Tilbrook
Clerk of the Privy Council

(a) 1988 c.48.

(b) Part 1 of the 1988 Act been amended. Relevant amendments have been made by the Courts and Legal Services Act 1990 (c.41), the Broadcasting Act 1990 (c.42), the Judicial Pensions and Retirement Act 1993 (c.8), the Criminal Justice and Public Order Act 1994 (c.33), the Merchant Shipping Act 1995 (c.21), the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 c.40, the Arbitration Act 1996 (c.23), the Broadcasting Act 1996 (c.55), the Education Act 1996 (c.56), the Government of Wales Act 1998 (c.38), the Scotland Act 1998 (c.46), the Northern Ireland Act 1998 (c.47), the Powers of the Criminal Court (Sentencing) Act 2000 (c.6), the Copyright, etc. and Trade Marks (Offences and Enforcement Act 2002 (c.25), the Enterprise Act 2002 (c.40), the British Overseas Territories Act 2003 (c.8), the Communications Act 2003 (c.21), the Legal Deposit Libraries Act 2003 (c.28), the Constitutional Reform Act 2004 (c.4), the Commissioners for Revenue and Customs Act 2005 (c.11), the Serious Organised Crime and Police Act 2005 (c.15), the Government of Wales Act 2006 (c.32), the National Health Service (Consequential Provisions Act 2006 c.43, the Health and Social Care Act 2008 (c.14), the Digital Economy Act 2010 (c.24), the Crime and Courts Act 2013 (c.22), the Enterprise and Regulatory Reform Act 2013 (c.24), the Intellectual Property Act 2014 (c.23), S.I.1992/3233, S.I. 1995/1445, S.I.1995/3297, S.I.1996/2967, S.I. 1997/3032, S.I. 1999/506, S.I. 1999/678, S.I.1999/2795, S.I. 2000/90. S.I. 2000/311, S.I. 2001/3949, S.I. 2003/2498, S.I. 2006/1016, S.I. 2006/1028, S.I. 2007/1116, S.I. 2008/1277, 2009/1941, S.I. 2010/2694, S.I. 2011/1043, S.I. 2013/1782, S.I. 2014 892, S.I. 2014/1372, S.I. 2014/1384, S.I. 2014/1385, S.I. 2014/2356 and S.I. 2014/2361.

SCHEDULE

Article 2

PART 1

Excluded provisions

1. The following provisions of Part 1 of the 1988 Act do not extend to the Cayman Islands—
 - (a) Sections 44A(a), 73A(b), 98(c), 114B(d), 144(e), 144A(f), 157(g), 158, 166A(h), 166B(i), 166C, 166D(j), 172A(k) and 177;
 - (b) paragraphs 13, 21, 34, 36(l) and 37 of Schedule 1; and
 - (c) Schedule A1(m).

PART 2

Modifications to the provisions of Part 1 of the 1988 Act applied by this Order

2. The provisions of Part 1 of the 1988 Act, which extend to the Cayman Islands by virtue of this Order, are to be read subject to the modifications specified in this Part of this Schedule.
3. In the provisions of Part 1 applied by this Order—
 - (a) references to the EEA, an EEA State, the European Economic area and the United Kingdom are to be read as references to the Cayman Islands;
 - (b) references as to whether a person is or is not a national of an EEA state are to be read as to whether the person in question possesses Caymanian status or not.
4. Section 27(n) applies with the omission of subsection (5).
5. In section 31BB(o) the reference to the Secretary of State is to be read as a reference to the Minister.
6. Section 40A(p) applies as if it were modified and set out as follows—

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- (a) Section 44A was inserted by the Legal Deposit Libraries Act 2003(c.28), section 8(1).
 - (b) Section 73A was inserted by the Broadcasting Act 1996 (c.55), section 138 and Schedule 9, paragraph 1.
 - (c) Section 98 was amended by S.I. 2014/892, article 2 and Schedule 1, Part 2, paragraphs 55 and 56.
 - (d) Section 114B was inserted by the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c.25), section 3 and amended by S.I. 2008/1277, regulation 30(1) and Schedule 2, Part 1, paragraphs 39 and 41.
 - (e) Section 144 was amended by the Enterprise Act 2002 (c.40), section 278(1) and Schedule 25, paragraphs 18(1) and (2) and by S.I. 2014/892, article 2 and Schedule 1, Part 2, paragraphs 55 and 57.
 - (f) Section 144A was inserted by S.I. 1996/2967, regulation 7 and amended by SI 2003/2498, regulations 2(1) and Schedule 1 paragraphs 1 and 15(2) and regulations 3 and 5 and amended by S.I. 2006/1028, regulation 2(4) and Schedule 4.
 - (g) Section 157 is to be read subject to the British Overseas Territories Act 2002 (c.8), section 1(2).
 - (h) Section 166A was inserted by the Scotland Act 1998 (c.46), section 125 and Schedule 8, paragraph 25(6).
 - (i) Section 166B was inserted by the Northern Ireland Act 1998 (c.47), section 99 and Schedule 13, paragraphs 8(1) and 8(6).
 - (j) Sections 166C and 166D were inserted by the Government of Wales Act 2006 (c.32), section 160(1) and Schedule 10, paragraphs 22 and 28.
 - (k) Section 172A was inserted by S.I. 1995/3297, regulation 11(1) and amended by S.I. 1996/2967, regulation 9(5) and S.I. 2006/1028, regulation 2(2) and Schedule 2, paragraphs 6 and 8 and regulation 2(4) and Schedule 4.
 - (l) Paragraph 36 of Schedule 1 is read subject to the British Overseas Territory Act 2002 (c.8), section 1(2).
 - (m) Schedule A1 was inserted by the Enterprise and Regulatory Reform Act 2013 (c.24), section 77(4) and Schedule 22, Part 1, paragraph 1.
 - (n) Section 27 was amended by S.I. 1992/3233, regulation 6, S.I. 1996/2967, regulation 4, S.I. 2003/2498 and regulations 2(2), 3, 20(3) and Schedule 2, S.I. 2011/ 1043, article 6(1)(f), S.I. 2014/1372, regulation 2 and the Schedule, paragraph 2, S.I. 2014/1384, regulation 4 and the Schedule, paragraph 1 and S.I. 2014/2361, regulations 2 and 4(1).
 - (o) Section 31BB was inserted by S.I. 2014/1384, regulation 2.
 - (p) Section 40A was inserted by S.I. 1996/2967, regulation 11(2) and amended by the Digital Economy Act 2010 (c. 24), sections 43(6) and (7) and S.I. 2014/1372, regulation 2 and Schedule, paragraph 3.

“40A Lending of copies by libraries or archives

Copyright in a work of any description is not infringed by the lending of copies of the work by a library or archive (other than a public library) which is not conducted for profit.”.

7. Section 46 applies—

- (a) with the section heading being read as “Enquiries”;
- (b) with references to Royal Commissions or statutory inquiries being read as references to Commissions of Enquiry appointed under the Commissions of Enquiry Act (1997 Revision); and
- (c) with the omission of subsection (4).

8. Section 47 applies(a)—

- (a) with references to the Secretary of State being read as references to the Cabinet as defined in section 44 of the Constitution of the Cayman Islands; and
- (b) with the substitution of the following in the place of subsection (7)—

“(7) An order made under this section is subject to annulment in pursuance of a resolution of the Legislative Assembly as defined in section 60 of the Constitution of the Cayman Islands.”.

9. Section 48(b) applies with the omission of subsection (6).

10. Section 49(c) applies as modified and set out as follows—

“49 Public records

Material which is comprised in public records which are open to public inspection in pursuance of any enactment may be copied and a copy may be supplied to any person, by or with the authority of any officer appointed under that enactment, without infringement of copyright.”.

11. Section 50 applies—

- (a) with the substitution of the following in the place of subsection (1)—

“(1) Where the doing of a particular act is specifically authorised by any law enacted by the Legislature of the Cayman Islands as defined in section 59 of the Constitution of the Cayman Islands, then, unless the law provides otherwise, the doing of that act does not infringe copyright.”; and
- (b) with the omission of subsection (2).

12. Sections 50A(3)(d), 50B(4)(e), 50BA(2)(f) and 50D(2)(g) apply with the omission of the words “(such terms being by virtue of section 296A, void)”.

13. Section 52(h) applies—

- (a) with “Secretary of State” being read as “Cabinet as defined in section 44 of the Constitution of the Cayman Islands”; and
- (b) the substitution of the following in the place of subsection (5)—

(a) Section 47 was amended by S.I. 2014/1385, regulation 2(1).
(b) Section 48 has been amended and relevant amendments were made by S.I. 2014/1385, regulation 2(2).
(c) Section 49 was amended by the Government of Wales Act 1998 (c.38), section 125, Schedule 12, paragraph 27 and the Government of Wales Act 2006 (c.32), section 160(1) and Schedule 10, paragraphs 22 and 24.
(d) Section 50A was inserted by S.I. 1992/3233, regulation 8.
(e) Section 50B was inserted by S.I. 1992/3233, regulation 8.
(f) Section 50BA was inserted by S.I. 2003/2498, regulations 3 and 15(1).
(g) Section 50D was inserted by S.I. 1997/3032, regulation 9.
(h) Section 52 is prospectively repealed by the Enterprise and Regulatory Reform Act 2013 (c.24), section 74.

“(5) An Order made under this section is subject to annulment in pursuance of a resolution of the Legislative Assembly.”.

14. In section 53, references to the Registered Designs Act 1949 are to be read as references to the enactments relating to the registration of designs in force in the Cayman Islands.

15. Section 61(a) applies with references to the Secretary of State being read as references to the Cabinet as defined in section 44 of the Constitution of the Cayman Islands.

16. Section 66(b) applies—

(a) with “Secretary of State” being read as “Cabinet as defined in section 44 of the Constitution of the Cayman Islands”; and

(b) with the substitution for subsection (4) of—

“(4) No Order shall be made unless a draft has been laid before and approved by a resolution of the Legislative Assembly, that is, the Legislative Assembly as defined in section 60 of the Constitution of the Cayman Islands.”.

17. Section 69(c) applies as modified and set out as follows—

“69 Recording for purposes of supervision and control of broadcasts and cable programmes

(1) Copyright is not infringed by the making or use by a prescribed broadcasting undertaking, for the purpose of maintaining supervision and control over programmes broadcast by that undertaking, of recordings of those programmes.

(2) Copyright is not infringed by the making or use by the Board of directors referred to in section 4 of the Information and Communications Technology Authority Law (2011 Revision) of recordings of programmes in connection with and for the purpose of carrying out their functions under that Law.

(3) In this section “prescribed” means prescribed by order of the Cabinet.

(4) An order made under this section is subject to annulment in pursuance of a resolution of the Legislative Assembly.”.

18. Section 73(d) applies as modified and set out as follows—

“73 Reception and re-transmission of wireless broadcasts by cable

(1) This section applies where a broadcast made from a place in the Cayman Islands is, by reception and immediate re-transmission, included in a cable retransmission service.

(2) The copyright in the broadcast and in any work included in the broadcast is not infringed if the inclusion is in pursuance of a relevant requirement.

(3) In this section, “relevant requirement” means a requirement under regulations made pursuant to section 97 of the Information and Communications Technology Authority Law (2011 Revision) regulating the provision of cable television service in the Cayman Islands.”.

19. Section 79(4)(e) applies with the substitution of “enquiries under the Commissions of Enquiry under the Commissions of Enquiry Law (1997 Revision) and statutory enquiries” for “section 46(1) or (2) (Royal Commissions and statutory inquiries)”.

(a) Section 61 was amended by S.I. 2014/1372, regulation 7.

(b) Section 66 was substituted by S.I. 1996/2967, regulation 11(3).

(c) Section 69 was amended by the Broadcasting Act 1996 (c.55), section 148(1) and Schedule 10, paragraph 31, the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 91 and section 406(7) and Schedule 19.

(d) Section 73 was substituted by the Broadcasting Act 1996 (c.55), section 138 and Schedule 9, paragraph 1 and amended by the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 92 and S.I. 2003/2498 regulations 3 and 22.

20. Section 81(6) applies with the omission of paragraph (c).

21. Section 82(1)(a) applies with substitution for paragraph (b) of—

“(b) work in which copyright subsists in favour of the Crown or the Legislative Assembly;”.

22. Section 85(2)(c) applies with the substitution of “enquiries under the Commissions of Enquiry under the Commissions of Enquiry Law (1997 Revision) and statutory enquiries” for “section 46(1) or (2) (Royal Commissions and statutory inquiries)”.

23. Section 97A(b) applies—

(a) with the substitution for “the High Court (or in Scotland the Court of Session)” of “the Grand Court referred to in section 84 of the Constitution of the Cayman Islands”;

(b) with the substitution for “regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013)” of “such law as may for the time being be in force in relation to the giving of notices.”;

(c) with the substitution for subsection (3) of—

“(3) In this section—

(a) a “service provider” is a person who provides any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services; and

(b) for the purposes of paragraph (a), a service is provided—

(i) “at a distance” where the provider of the service and the recipient of the service are not simultaneously present;

(ii) “by “electronic means” where that service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means; and

(iii) “at the individual request of a recipient of services” where the service is provided through the transmission of data on individual request.”.

24. Section 100 applies—

(a) with the substitution in subsection (2) of “the Commissioner of Police referred to in section 2 of the Police Law (Law 36 of 2010)” for “a local police station”;

(b) with the substitution of “Cabinet” for “Secretary of State”.

(c) with the substitution for subsection (6) of—

“(6) An order made under this section is subject to annulment in pursuance of a resolution of the Legislative Assembly.”.

25. For the purposes of sections 107(4)(a)(c), 107(4A)(a)(d), and 107(5)(e), the fine which may be imposed on summary conviction is a fine not exceeding \$20,000.

26. Section 107A(f) applies as modified and set out below—

(a) Section 82(1)(a) was amended by S.I. 2003/2498, regulation 2 and Schedule 1, Part 1, paragraphs 1 and 18(2).

(b) Section 97A was inserted by S.I. 2003/2498, regulations 3 and 27(1).

(c) Section 107(4)(a) was amended by the Digital Economy Act 2010 (c.24), section 42.

(d) Section 107(4A) was inserted by S.I. 2003/2498, regulations 3 and 26(1)(b) and amended by the Digital Economy Act 2010 (c.24), section 42.

(e) Section 107(5) was amended by S.I. 2010/2694, regulation 5.

(f) Section 107A was inserted by the Criminal Justice and Public Order Act 1994 (c.33), section 165(2).

“107A Enforcement by the Director of Commerce and Investment

(1) It is the duty of the Director of Commerce and Investment to take administrative measures that are necessary or expedient for the enforcement of copyright legislation, but this shall not be read as empowering the Director to prosecute criminal cases relating to infringement, which power remains with the Director of Public Prosecutions in accordance with the Constitution of the Cayman Islands.

(2) For the purposes of subsection (1), the Director of Commerce and Investment (and any officer generally or specifically authorised by him in writing) has the power—

- (a) to make test purchases; and
- (b) to enter premises and inspect and seize goods and documents.

(3) The Director of Commerce and Investment (and any officer generally or specifically authorised by him in writing) has all the powers of a constable under the Police Law (2014 Revision) and, without limiting this provision, enjoys the protections afforded to a constable under the Police Law (2014 Revision) but is not protected from suit for compensation on account of any loss suffered by any person arising from the exercise of those powers in bad faith.”.

27. Section 108(a) applies—

- (a) with the substitution for subsection (2) of—

“(2) For this purpose a person is to be treated as charged with an offence when he is orally charged or is served with a summons or indictment.”;

- (b) with the omission in subsection (3) of “(or in Scotland, the Lord Advocate or procurator fiscal)”;

- (c) with the substitution for subsection (4) of—

“(4) An appeal lies from an order made under this section by a summary court constituted under the Summary Jurisdiction Law (2006 Revision) to the Grand Court referred to in section 84 of the Constitution of the Cayman Islands.”;

- (d) with the substitution for subsection (6) of—

“(6) An appeal lies from an order made under this section by a summary court constituted under the Summary Jurisdiction Law (2006 Revision) to the Grand Court referred to in section 84 of the Constitution of the Cayman Islands.”.

28. Section 109(b) applies—

- (a) with the deletion of “(in Scotland, a sheriff or justice of the peace)” and “(in Scotland, by evidence on oath)”;

- (b) the substitution in subsection (2) of “does not extend to authorising a search for personal or confidential material that is protected under legislation.” for “does not” to the end of that subsection.

29. Section 111(c) applies—

- (a) with references to “the Commissioners of Customs and Excise” being read as references to the Collector of Customs referred to in section 2 of the Customs Law (2012 Revision); and

- (b) with the substitution for subsections (3A), and (4) of—

“(3A) The Collector of Customs may treat as prohibited goods only infringing copies of works which arrive from outside the Cayman Islands.

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- (a) Section 108 was amended by the Powers of the Criminal Court (Sentencing) Act 2000 (c.6), section 165(1) and by the Criminal Procedure (Consequential Provisions)(Scotland) Act 1995 (c.40), section 5 and Schedule 4 paragraph 70(2).
 - (b) Section 109 was amended by S.I. 2003/2498, regulations 3 and 26(2), the Serious Organised Crime and Police Act 2005 (c.15), section 174(2) and Schedule 16, paragraph 6 and the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c.25), section 2.
 - (c) Section 111 was amended by S.I. 1995/1445, regulation 2(2) and S.I. 2004/1473, regulation 1.

(4) Subject to subsections (3A), when a notice is in force under this section, the importation of goods to which this notice relates, otherwise than by a person for his private and domestic use, is prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.”.

30. Section 112(a) applies—

- (a) with references to the Commissioners of Customs and Excise being read as references to the Minister responsible for customs and excise; and
- (b) with the substitution for subsection (4) of—

“(4) Regulations under this section are subject to annulment by a negative resolution of the Legislative Assembly.”.

31. Section 113 applies with the substitution for subsection (3) of—

“(3) In this section “disability” means an impairment in a person’s ability to function, caused by changes in various subsystems of the body, or mental incapacity.”.

32. Section 114(b) applies with the substitution for subsection (6) of—

“(6) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it under any enactment permitting orders to be made as to disposal of goods, other articles or material infringing any intellectual property.”.

33. Section 114A(c) applies—

- (a) with the deletion from the section heading of the words “England and Wales or Northern Ireland”;
- (b) the substitution of “Where” for “ In England and Wales or Northern Ireland where”;
- (c) the substitution for subsections (2)(b) to 2(bb) of—

“(b) any law for the time being in force in the Cayman Islands relating to trade descriptions;”;
- (d) the substitution for subsection (6) of—

“(6) Any person aggrieved by an order made under this section by a summary court referred to in the Summary Jurisdiction Law (2006 Revision), or by a decision of such a court not to make such an order, may appeal that order or decision to the Grand Court.”; and
- (e) the substitution for appeal” to the end of the section of “appeal, including a case stated pursuant to section 172 (Case stated) under the Criminal Procedure Code (2014 Revision)”.

34. Section 115(d) applies as modified and set out as follows—

“115 Jurisdiction of summary court

- (1) A summary court may entertain proceedings under—
 - (a) section 99 (order for delivery up of infringing copy or other article);
 - (b) section 101(5) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights); or
 - (c) section 114 (order as to disposal of infringing copy or other article).

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- (a) Section 112(5) was repealed by the Commissioners for Revenue and Customs Act 2005 (c.11), sections 50(6) and 52(2) and Schedule 4, paragraph 38 and Schedule 5.
 - (b) Section 114 was amended by S.I. 2006/1028, regulation 2(2) and Schedule 2, paragraphs 6 and 7.
 - (c) Section 114A was inserted by the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c.25), section 3 and amended by S.I. 2003/2498, regulations 2 and 26(2)(iii) and by S.I. 2008/1277, regulation 30(1) and Schedule 2, Part 1, paragraphs 39 and 40.
 - (d) Section 115 was amended by the Crime and Courts Act 2013 (c.22), section 17(5), Schedule 9, Part 3, paragraph 72.

(2) Nothing in this section shall be construed as affecting the jurisdiction of the Grand Court.”.

35. In section 116(4)(a)—

- (a) the reference to subsidiaries are to be read as references to subsidiary companies within the meaning of section 232 of the Companies Law (2013 Revision); and
- (b) the reference to “a holding company” is to be read as a reference to “a parent company” within the meaning of section 232 of the Companies Law (2013 Revision).

36. In sections 116A and 116B(b) references to the Secretary of State are to be read as references to the Cabinet as defined in section 44 of the Constitution of the Cayman Islands.

37. Section 116D(c) applies with the substitution for subsections (4) and (5) of—

“(4) Regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of the Legislative Assembly.”.

38. Section 134(d) applies with the omission of—

- (a) “Subject to subsection (3A)” in subsection (1); and
- (b) subsections (3) and (3A).

39. Section 135H(e) applies—

- (a) with references to the Secretary of State being read as references to the Cabinet as defined in section 44 of the Constitution of the Cayman Islands; and
- (b) with the substitution for subsection (2) of—

“(2) No order shall be made unless a draft of it has been laid before and approved by resolution of the Legislative Assembly.”.

40. In sections 137 to 139, references to the Secretary of State are to be read as references to the Cabinet as defined in section 44 of the Constitution of the Cayman Islands.

41. Section 140 applies—

- (a) with references to the Secretary of State being read as references to the Minister responsible for matters relating to intellectual property; and
- (b) with the substitution for subsection (6) of—

“(6) Regulations made under this section shall be subject to annulment in pursuance of a resolution of the Legislative Assembly.”.

42. Section 141 applies—

- (a) with references to the Secretary of State being read as references to the Cabinet as defined in section 44 of the Constitution of the Cayman Islands; and
- (b) with the substitution for subsection (8) of—

(a) Section 116(4) was amended by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 98(a).
(b) Sections 116A and 116B were inserted by the Enterprise and Regulatory Reform Act 2013 (c.24), section 77(1) and (3).
(c) Section 116D was inserted by the Enterprise and Regulatory Reform Act 2013 (c.24), section 77(1) and (3).
(d) Section 134 was amended by the Broadcasting Act 1996 (c.55), section 138 and Schedule 9, paragraph 2 and section 203(3) and Schedule 21 and S.I. 2003/2498, regulation 2(2) and Schedule 2.
(e) Section 135H was inserted by the Broadcasting Act 1996 (c.55), section 139(1) and amended by S.I. 2003/2498, regulation 2(2) and Schedule 2.

“(8) An order made under this section shall be subject to annulment in pursuance of a resolution of the Legislative Assembly.”.

43. Section 143(a) applies—

- (a) with references to the Secretary of State being read as references to the Cabinet as defined in section 44 of the Constitution of the Cayman Islands; and
- (b) with the omission in subsection (2) of the words “made by statutory instrument”.

44. Sections 145 to 148(b) apply as modified and set out as follows—

“145 The Copyright Tribunal

- (1) There shall be a Copyright Tribunal for the Cayman Islands.
- (2) The Copyright Tribunal shall consist of a chairman, two deputy chairmen and not less than three other members, appointed by the Cabinet.
- (3) A person is not eligible for appointment as chairman or deputy chairman unless—
 - (a) he is a barrister or attorney of at least seven years’ standing or he has held judicial office; or
 - (b) he has considerable experience of copyright matters.

146 Membership of the Copyright Tribunal

- (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.
- (2) The term of appointment of a member of the Copyright Tribunal shall not exceed 3 years, and may be renewed.
- (3) A member of the Copyright Tribunal may resign his office by notice in writing to the Cabinet.
- (4) The Cabinet may by notice in writing to the member concerned remove him from office if—
 - (a) he has become bankrupt or made an arrangement with his creditors;
 - (b) he is incapacitated by physical or mental illness; or
 - (c) he is in the opinion of the Cabinet otherwise unable or unfit to perform his duties as member.
- (5) If a member of the Copyright Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed by the Cabinet to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings.

147 Financial provisions

There shall be paid to the members of the Copyright Tribunal such remuneration, and such allowances, as the Cabinet may determine, and, under the Public Service Management Law (2011 Revision), support staff for the Tribunal may be appointed.

(a) Section 143 has been amended by S.I. 1996/2967, regulation 11(4), S.I. 2014/1372, regulation 2 and the Schedule, paragraph 5 and S.I. 2014/1384, regulation 4 and the Schedule, paragraph 2.

(b) Section 146 was amended by the Judicial Pensions and Retirement Act 1993 (c.8), section 26 and Schedule 6, paragraph 49, the Constitutional Reform Act 2004 (c.4), section 15(1), Schedule 4, Part 1, paragraphs 198 and 199 and S.I. 2006/1016, article 4 and Schedule 3.

148 Constitution for the purposes of proceedings

- (1) For the purposes of any proceedings, the Copyright Tribunal shall consist of—
- (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal; and
 - (b) two other members appointed by the Minister from the panel of members.

(2) If the members of the Copyright Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.

(3) If the chairman is unable to continue, he shall appoint one of the remaining members to act as chairman.

(4) The chairman may (where necessary) appoint a suitably qualified person to attend the proceedings and advise the members on any technical questions on copyright issues arising.

(5) A person is suitably qualified for the purpose of subsection (4) if he is, or is eligible for appointment as, chairman or deputy chairman of the Copyright Tribunal.”

45. Section 149(a), applies with the omission of paragraph (ca).

46. Sections 150 and 151(b) apply as modified and set out as follows—

“150 Power to make rules

(1) The Cabinet may make rules for regulating proceedings before the Copyright Tribunal and as to the fees chargeable in respect of such proceedings.

(2) The rules may apply in relation to the Copyright Tribunal any of the provisions of the Arbitration Law, 2012 (Law 3 of 2012).

(3) Provision shall be made by the rules—

- (a) prohibiting the Copyright Tribunal from entertaining a reference under section 118, 119 or 120 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;
- (b) specifying the parties to any proceedings and enabling the Copyright Tribunal to make a party to the proceedings any person or organisation satisfying the Tribunal that they have a substantial interest in the matter; and
- (c) requiring the Copyright Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.

(4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Copyright Tribunal under section 152 (appeal to the court on point of law).

(5) Rules made under this section are subject to annulment by a resolution of the Legislative Assembly.

151 Costs, proof of orders

(1) Subject to any rules that may be made by the Rules Committee referred to in section 19 of the Grand Court Law (2008 Revision), the Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.

(a) Section 149 was amended by the Broadcasting Act 1990 (c.42), section 175(1), the Broadcasting Act 1996 (c.55), section 138, Schedule 9, paragraph 3, S.I. 1996/2967, regulations 14(2) and 24(2) and S.I. 2003/2498 regulations 2(2), 3, 21(6) and Schedule 2.

(b) Section 150 was amended by the Arbitration Act 1996 (c.23), section 107(1) and Schedule 3, paragraph 50 and S.I. 1999/678, article 2(1) and Schedule.

(2) A document purporting to be a copy of an order of the Copyright Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.”

47. Section 152 applies with the substitution for subsection (1) of—

“(1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the Grand Court.”.

48. Section 154(a) applies with the substitution for subsection (1) of—

“(1) A work qualifies for copyright protection if at the material time the author—

(a) was a “Caymanian” as defined in section 2 of the Immigration Law (2013 Revision);

(b) was an individual domiciled or resident in the Cayman Islands; or

(c) was a body incorporated or registered under the law of the Cayman Islands.”.

49. Section 155(b) applies with the omission of subsection (1)(b).

50. Section 156(c) applies with the omission of subsection (1)(b).

51. Section 159(d) applies—

(a) with the substitution for subsection (1) of—

“(1) The Cabinet may by order make provision for applying in relation to a foreign country any of the provisions of this Part specified in the order so as to secure that those provisions—

(a) apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply to Caymanians or to persons who are domiciled or resident in the Cayman Islands; or

(b) apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of the Cayman Islands; or

(c) apply in relation to works first published in that country as they apply in relation to works first published in the Cayman Islands; or

(d) apply in relation to broadcasts made from that country as they apply in relation to broadcasts made from the Cayman Islands.”.

(b) with the substitution in subsection (3) of “the Cabinet shall not make an order”; for the words beginning with “or another” and ending with “in Council”;

(c) the substitution for subsection (5) of—

“(5) An order made under this section is subject to annulment in pursuance of a resolution of the Legislative Assembly.”.

52. Sections 160 to 162(e) apply as modified and set out as follows—

“160 Denial of copyright protection to citizens of countries not giving adequate protection to Caymanian works

(1) If it appears to the Cabinet that the law of a country fails to give adequate protection to Caymanian works to which this section applies, or to one or more classes of such works, the Cabinet may make provision by order in accordance with this section restricting the rights conferred by this Part in relation to works of authors connected with that country.

(a) Section 154 was amended by the British Overseas Territories Act 2003 (c.8), section 2(3) and is prospectively amended from a date to be appointed by the Intellectual Property Act 2014 (c.18), section 22.

(b) Section 155 is prospectively amended from a date to be appointed by the Intellectual Property Act 2014 (c.18), section 22.

(c) Section 156 was amended by S.I. 2003/2498, regulation 2(2) and Schedule 2 and is prospectively amended from a date to be appointed by the Intellectual Property Act 2014 (c.18), section 22.

(d) Section 159 was amended by S.I. 2003/2498, regulation 2(2) and Schedule 2.

(e) Section 162 was amended by the Merchant Shipping Act 1995 (c.21), section 314(2) and Schedule 13, paragraph 84(a).

(2) An order under this section shall designate the country concerned and provide that, for the purposes specified in the order, works first published after a date specified in the order shall not be treated as qualifying for copyright protection by virtue of such publication if at that time the authors are—

- (a) citizens or subjects of that country (not domiciled or resident in the Islands); or
- (b) bodies incorporated under the law of that country,

and the order may make such provision for all the purposes of this Part or for such purposes as are specified in the order, and either generally or in relation to such class of cases as are specified in the order, having regard to the nature and extent of that failure referred to in subsection (1).

(3) This section applies to literary, dramatic, musical and artistic works, sound recordings and films.

(4) In this section “Caymanian works” means works of which the author was a qualifying person at the material time within the meaning of section 154.

(5) An order made under this section is subject to annulment by a negative resolution of the Legislative Assembly.

161 Territorial Waters

For the purposes of this Part, the territorial waters of the Cayman Islands shall be treated as part of the Islands.

162 Cayman Islands ships and aircraft

(1) This Part applies to things done on a Cayman Islands ship or aircraft as it applies to things done in the Islands.

(2) In this section “Cayman Islands ship” and “Cayman Islands aircraft” mean, respectively, a ship or an aircraft registered in the Islands.”.

53. Section 163(a) applies with references to “Her Majesty” being read as “the Crown”.

54. Section 164(b) applies—

(a) with the omission of “and Measures” in the section heading;

(b) with the substitution for subsections (1) and (2) of—

“(1) Her Majesty is entitled to copyright in every Law of the Legislature.

(2) The copyright subsists until the end of the period of 50 years from the end of the calendar year in which Governor’s Assent was given.”;

(c) with the omission in subsection (4) of “or Measure”.

55. Sections 165 to 169(c) apply as modified and set out as follows—

“165 Parliamentary copyright

(1) Where a work is made by or under the direction or control of the Legislative Assembly—

- (a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection); and

-
- (a) Section 163 was amended by the Scotland Act 1998 (c.46), section 125 and Schedule 8, paragraph 25(4) and by the Government of Wales Act 2006 (c.32), section 160(1) and Schedule 10, paragraphs 22 and 26.
 - (b) Section 164 was amended by the Scotland Act 1998 (c.46), section 125 and Schedule 8, paragraph 25(5), the Northern Ireland Act 1998 (c.47), section 99 and Schedule 13, paragraph 8 and the Government of Wales Act 2006 (c.32), section 160(1) and Schedule 10, paragraphs 22 and 27.
 - (c) Section 165 was amended by S.I. 2003/2498, regulation 2(1), Schedule 1, Part 1, paragraphs 1 and 11(b) and modified by S.I. 2007/1116.

(b) the Legislative Assembly owns any copyright in the work.

(2) Copyright in such a work is referred to in this Part as “parliamentary copyright”, notwithstanding that it may be, or have been, assigned to another person.

(3) Parliamentary copyright in a literary, dramatic, musical or artistic work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.

(4) For the purposes of this section, works made by or under the direction or control of the Legislative Assembly include—

- (a) any work made by an officer or employee of the Legislative Assembly in the course of his duties; and
- (b) any sound recording, film, or live broadcast of the proceeding in the Legislative Assembly,

but a work shall not be regarded as made by or under the direction or control of the Legislative Assembly by reason only of its being commissioned by or on behalf of the Legislative Assembly.

(5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of, the Legislative Assembly, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to parliamentary copyright as to other copyright.

166 Copyright in Bills

(1) Copyright in every Bill introduced into the Legislative Assembly belongs, in accordance with the following provisions, to the Legislative Assembly.

(2) Copyright in a public Bill belongs to the Legislative Assembly and subsists from the time when the text of the Bill is handed in to the appropriate officer of the Assembly.

(3) Copyright in a private Bill belongs to the Legislative Assembly and subsists from the time when a copy of the Bill is first handed in to the appropriate officer of the Assembly.

(4) Copyright under this section ceases—

- (a) on Governor’s Assent; or
- (b) if the Bill does not receive Governor’s Assent, on the withdrawal or rejection of the Bill or the end of the Session.

(5) References in this Part to parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other parliamentary copyright.

(6) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having passed in one Session, is reintroduced in a subsequent Session.

167 The Legislative Assembly: supplementary provisions

(1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the Legislative Assembly shall be treated as having the legal capacities of a body corporate, which shall not be affected by a prorogation or dissolution.

(2) The functions of the Legislative Assembly as owner of copyright shall be exercised by the Speaker on behalf of the Legislative Assembly; and, if so authorised by the Speaker, or in case of a vacancy in the office of Speaker, those functions may be discharged by the Deputy Speaker.

(3) For this purpose a person who on the dissolution of the Legislative Assembly was Speaker or Deputy Speaker of the Legislative Assembly may continue to act until the corresponding appointment is made in the next Session of the Legislative Assembly.

(4) Legal proceedings relating to copyright shall be brought by or against the Legislative Assembly in the name of “The Speaker of the Legislative Assembly”.

168 Copyright vesting in certain international organisations

(1) Where an original literary, dramatic, musical or artistic work—

- (a) is made by an officer or employee of, or is published by, an international organisation to which this section applies; and
- (b) does not qualify for copyright protection under section 154 (qualification by reference to author) or section 155 (qualification by reference to country of first publication),

copyright nevertheless subsists in the work by virtue of this section and the organisation is first owner of that copyright.

(2) The international organisations to which this section applies are those as to which the Cabinet has by order declared that it is expedient that this section should apply.

(3) Copyright of which an international organisation is first owner by virtue of this section continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be specified by the Cabinet by order, for the purpose of complying with the international obligations of the Cayman Islands.

(4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

(5) An order made under this section is subject to annulment by a negative resolution of the legislative assembly.

169 Folklore etc.: anonymous unpublished works

(1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country outside the Islands, it shall be presumed until the contrary is proved that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.

(2) If under the law of that country a body is appointed to protect and enforce copyright in such works, the Cabinet may by order designate that body for the purposes of this section.

(3) A body so designated shall be recognised in the Islands as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country; and it may, in particular, bring proceedings in its own name.

(4) In subsection (1), a “qualifying individual” means an individual who at the material time (within the meaning of section 154) was a person whose works qualified under that section for copyright protection.

(5) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

(6) An order made under this section is subject to annulment by a negative resolution of the Legislative Assembly.”.

56. Section 171 applies—

- (a) with the substitution, in subsection (1)(c), of “Legislative Assembly” for “either House of Parliament”;
- (b) with the omission, in subsection (1)(d), of “and excise”; and
- (c) with the omission, in subsection (5), of “, Measures”.

57. Section 174(a) applies as modified and set out below—

“174 Meaning of “educational establishment” and related expressions

(1) The expression “educational establishment” in a provision of this Part means—

- (a) any school; and
- (b) any other description of educational establishment specified for the purposes of this Part, or that provision, by order of the Cabinet.

(2) The Cabinet may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified in the order, in relation to teachers who give instruction elsewhere to pupils who are unable to attend an educational establishment.

(3) In subsection (1)(a) “school” has the same meaning as in section 2 of the Education Law (2010 Revision).

(4) An order under subsection (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the order.

(5) In relation to an educational establishment the expressions “teacher” and “pupil” in this Part include, respectively, any person who gives and any person who receives instruction.

(6) References in this Part to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.

(7) An order under this section shall be subject to a negative resolution of the Legislative Assembly.”

58. Section 178(b) applies—

- (a) with the omission of the definitions of “parliamentary proceedings” and “public library”;
- (b) with the substitution for the definition of “the Crown” of—
 - ““the Crown” means the Crown in right of Her Majesty’s Government in the Cayman Islands”; and
- (c) with the inclusion of the following definitions in their appropriate alphabetical places—
 - ““Cabinet” means the Cabinet referred to in section 44 of the Constitution of the Cayman Islands;”
 - ““Caymanian” has the meaning given in section 2 of the Immigration Law (2014 Revision);”
 - ““Minister” means the Minister responsible for matters relating to intellectual property; ”.

(a) Section 174 was amended by the Education Act 1996 (c.56), section 582(1) and Schedule 37, paragraph 83 and S.I. 2010/1158, article 5(1) and Schedule 2, Part 2, paragraph 36.

(b) Section 178 was amended by the Scotland Act 1998 (c.46), section 125 and Schedule 8, paragraph 25(7), the Northern Ireland Elections Act 1998 (c.12), section 1 and the Schedule, paragraph 9, the Government of Wales Act 2006, s160(1) and Schedule 10, paragraphs 22 and 29, S.I. 1996/2967, regulations, 8, 10(3), 11(5) and 18(5) and S.I. 2003/2498, regulation 2(1) and Schedule 1, Part 1, paragraphs 1 and 15(3).

59. Section 179(a) applies—

- (a) with the omission from the index of defined expression of any expression followed by (“in Scotland”), “the EEA, EEA State and National of an EEA state”, “parliamentary proceedings” and “public library”;
- (b) in the entry relating to the definition of “on behalf of (in relation to and educational establishment)”, for “section 174(5)”, substitute “section 174(6)”; and
- (c) in the entry relating to the definition of “Parliamentary copyright”, omit the references to sections 166A(3), 166B(3), 166C(3) and 166D(3).

60. Paragraph 1 of Schedule 1 applies—

- (a) with “as applied in the Cayman Islands” inserted at the end of the definitions of “the 1911 Act” and the “1956 Act”; and
- (b) the omission of the words “and Schedules 3, 7 and 8” to the end in the definition of “the new copyright provisions”.

61. Paragraph 5(2)(b) of Schedule 1 applies with the substitution of “foreign countries” for “countries to which it does not extend”.

62. Paragraph 6 of Schedule 1 applies—

- (a) with the substitution in sub-paragraph (1) of “such law as may at that time have been in force in relation to registered designs” for “the Registered Designs Act 1949”;
- (b) with the omission in sub-paragraph (2)(a) of the words from “as defined” to “1949”; and
- (c) with the insertion after sub-paragraph (2) of—

“(3) In sub-paragraph (2)(a) “single set of articles” means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with alterations or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied.”.

63. Paragraph 15(b) of Schedule 1 applies with the omission of sub-paragraph (2)(b).

64. Paragraph 19 of Schedule 1 applies with the omission of sub-paragraphs (2) to (6).

65. Paragraph 23 of Schedule 1 applies with the omission of sub-paragraph (4).

66. Paragraph 38 of Schedule 1 applies with the omission of the words “or the United Kingdom section of the Continental Shelf”.

67. Paragraph 39 applies with the substitution of “Caymanian ships and aircraft” for “British ships, aircraft and hovercraft”.

68. Paragraph 40(1)(b) applies with the omission of “, Measures”.

69. For paragraph 42, substitute—

“42. Section 164 (copyright in Acts) applies to existing Laws of the Legislature.”.

70. Paragraph 43(2) applies with—

- (a) the omission of the word “Parliamentary” wherever it appears;

(a) Section 179 was amended by the Broadcasting Act 1990 (c.42), the Scotland Act 1998 (c.46), section 125 and Schedule 8, para 25(8), the Northern Ireland Act 1998 (c.47), section 99 and Schedule 13, paragraph 8(8), the Copyright (Visually Impaired Persons) Act 2002 c.33, section 7(2), the Government of Wales Act 2006 (c.38), section 166(1) and Schedule 10, paragraphs 22 and 30, S.I. 1992/3233, regulation 9, S.I. 1995/3297, regulations 8(2), 9(5) and 11(2), S.I. 1996/2967, regulations 9(6)(b), 10(4), 11(6) and 18(6), S.I. 1997/3032, regulation 1(2) and 11, S.I. 2003/2498 regulation 2(1) and Schedule 1, Part 1, paragraphs 1 and 15(4), regulation 2(2) and Schedule 2, regulation 3 and 21(7), S.I. 2006/1028, regulation 2(2) and Schedule 2, paragraphs 6 and 9, S.I. 2014/1372, regulation 2 and the Schedule, paragraph 6 and S.I. 2014/1384, regulation 4 and the Schedule, paragraph (3).

(b) Paragraph 15 was amended by S.I. 2003/2498, regulation 2 and Schedule 1, Part 1, paragraphs 1 and 6 and Schedule 2.

- (b) in sub-paragraph (2)(a) the substitution of “the Legislature” for “Parliament”;
- (c) in sub-paragraph (2)(b) the substitution of “the Legislature” for “either House”; and
- (d) the omission of sub-paragraph (c) and the word “or” at the end of paragraph (2).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends Part 1 of the Copyright, Designs and Patents Act 1988 to the Cayman Islands. The application of Part 1 is subject to the exclusions and modifications set out in the Schedule to the Order. The effect of the making of the Order is that the provisions of the Copyright (Cayman Islands) Order 1965 lapse by virtue of paragraph 36(2)(a) of Schedule 1 to the 1988 Act. The 1965 Order applied certain of the provisions of the Copyright Act 1956 to the Cayman Islands.

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