

Statutory Document No. 0074/13



*European Communities (Isle of Man) Act 1973*

## **COPYRIGHT (AMENDMENT) REGULATIONS 2013**

*Laid before Tynwald:* 19 March 2013  
*Coming into Operation:* 1 April 2013

The Council of Ministers makes the following Regulations under section 2B of the European Communities (Isle of Man) Act 1973.

**1 Title**

These Regulations are the Copyright (Amendment) Regulations 2013.

**2 Commencement**

These Regulations come into operation on 1 April 2013.

**3 Amendment of Copyright Act 1991**

Subject to regulation 4, the Copyright Act 1991 is amended in accordance with Schedule 1.

**4 Transitional provisions**

The transitional provisions in Schedule 2 have effect.

**MADE 28<sup>TH</sup> FEBRUARY 2013**

**W GREENHOW**  
*Chief Secretary*



## SCHEDULE 1

[regulation 3]

## AMENDMENTS OF THE COPYRIGHT ACT 1991

1. In section 1(1)(b) for “, broadcasts or cable programmes” substitute **64** or broadcasts<sup>**62**</sup>.

*Treatment of film soundtracks*

2. (1) For section 5 substitute —

**64** 5. **Sound recordings**

- (1) In this Act “**sound recording**” means—

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

- (2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

**5A. Films**

- (1) In this Act “**film**” means a recording on any medium from which a moving image may by any means be produced.

- (2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Act.

- (3) Without prejudice to the generality of subsection (2), where that subsection applies—

- (a) references in this Act to showing a film include playing the film sound track to accompany the film,
- (b) references in this Act to playing a sound recording, or to communicating a sound recording to the public, do not include playing or communicating the film sound track to accompany the film,
- (c) references in this Act to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film, and
- (d) references in this Act to the issuing or rental of copies of a work, so far as they apply to a sound recording, do not

include the issuing or rental of copies of the sound track to accompany the film.

- (4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.
- (5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording. **22**.

*Provisions relating to broadcasts*

3. (1) For section 6(1) substitute—

**23**(1) In this Act a “**broadcast**” means an electronic transmission of visual images, sounds or other information which—

- (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or
- (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public,

and which is not excepted by subsection (1A); and references to broadcasting shall be construed accordingly.

(1A) Excepted from the definition of “broadcast” is any internet transmission unless it is—

- (a) a transmission taking place simultaneously on the internet and by other means,
- (b) a concurrent transmission of a live event, or
- (c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person. **24**.

- (2) In section 6(3) for “, broadcasting a work, or including a work in a broadcast” substitute **25** or a transmission which is a broadcast **22**.

- (3) In section 6(4), for “a broadcast” substitute **26** a wireless broadcast **22**.

- (4) After section 6(5) insert—

**27**(5A) The relaying of a broadcast by reception and immediate re-transmission shall be regarded for the purposes of this Act as a separate act of broadcasting from the making of the broadcast which is so re-transmitted. **22**.

- (5) In section 6(6), omit “or in a cable programme”.

4. In section 6A(1)(a), (b) and (c), before “broadcasting” insert **28** wireless **22**.

5. Omit section 7.

*Authorship of films*

6. In section 9(2) —
- (a) for paragraph (a) substitute—
- (a) in the case of a sound recording, the producer;
- (aa) in the case of a film, the producer and the principal director; ~~(b)~~;
- (b) omit paragraph (c).
7. In section 10, after subsection (1) insert—
- ~~(1A)~~ (1A) A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person. ~~(2)~~.
8. In section 11(2), after “literary, dramatic, musical or artistic work” insert ~~(a)~~, or a film, ~~(b)~~.

*Duration of copyright*

9. For section 12 substitute —

**~~(12)~~ 12. Duration of copyright in literary, dramatic, musical or artistic works**

- (1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.
- (2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.
- (3) If the work is of unknown authorship, copyright expires—
- (a) at the end of the period of 70 years from the end of the calendar year in which the work was made, or
- (b) if during that period the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available,
- subject as follows.
- (4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in paragraph (a) or (b) of subsection (3).
- (5) For the purposes of subsection (3) making available to the public includes—
- (a) in the case of a literary, dramatic or musical work—
- (i) performance in public, or
- (ii) communication to the public;
- (b) in the case of an artistic work—

- (i) exhibition in public,
- (ii) a film including the work being shown in public, or
- (iii) communication to the public;

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(6) Where the country of origin of the work is not an EEA state and the author of the work is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (5).

(7) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(8) The provisions of this section are adapted as follows in relation to a work of joint authorship—

(a) the reference in subsection (2) to the death of the author shall be construed—

- (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and
- (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known;

(b) the reference in subsection (4) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known;

(c) the reference in subsection (6) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.

(9) This section does not apply to Crown copyright or Tynwald copyright (see sections 156 to 159) or to copyright which subsists by virtue of section 161 (copyright of certain international organisations).<sup>22</sup>

#### *Duration of copyright in sound recordings and films*

10. For section 13 substitute—

### **13. Duration of copyright in sound recordings**

(1) The following provisions have effect with respect to the duration of copyright in a sound recording.

- (2) Subject to subsections (3) and (4), copyright expires —
- (a) at the end of the period of 50 years from the end of the calendar year in which the recording is made, or
  - (b) if during that period the recording is published, 50 years from the end of the calendar year in which it is first published, or
  - (c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available,
- but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act.
- (3) Where the author of a sound recording is not a national of an EEA state, the duration of copyright is that to which the sound recording is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).
- (4) If or to the extent that the application of subsection (3) would be at variance with an international obligation which extended to the Island before 1 April 2013, the duration of copyright shall be as specified in subsection (2).

### **13A. Duration of copyright in films**

- (1) The following provisions have effect with respect to the duration of copyright in a film.
- (2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons —
- (a) the principal director,
  - (b) the author of the screenplay,
  - (c) the author of the dialogue, or
  - (d) the composer of music specially created for and used in the film;
- subject as follows.
- (3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.

- (4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at—
- (a) the end of the period of 70 years from the end of the calendar year in which the film was made, or
  - (b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available.
- (5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in paragraph (a) or (b) of subsection (4).
- (6) For the purposes of subsection (4) making available to the public includes—
- (a) showing in public, or
  - (b) communicating to the public;
- but in determining generally for the purposes of that subsection whether a film has been made available to the public no account shall be taken of any unauthorised act.
- (7) Where the country of origin is not an EEA state and the author of the film is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (6).
- (8) In relation to a film of which there are joint authors, the reference in subsection (7) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.
- (9) If in any case there is no person falling within subsection (2)(a) to (d), the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.
- (10) For the purposes of this section the identity of any of the persons referred to in subsection (2)(a) to (d) shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown. **22**.

*Duration of copyright in broadcasts*

11. For section 14 substitute—

**14. Duration of copyright in broadcasts**

- (1) The following provisions have effect with respect to the duration of copyright in a broadcast.



- (2) Copyright in a broadcast expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made, subject as follows.
- (3) Where the author of the broadcast is not a national of an EEA state, the duration of copyright in the broadcast is that to which it is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).
- (4) If or to the extent that the application of subsection (3) would be at variance with an international obligation which extended to the Island before 1st April 2013, the duration of copyright shall be as specified in subsection (2).
- (5) Copyright in a repeat broadcast expires at the same time as the copyright in the original broadcast; and accordingly no copyright arises in respect of a repeat broadcast which is broadcast after the expiry of the copyright in the original broadcast.
- (6) A repeat broadcast means one which is a repeat of a broadcast previously made. ~~22~~.

*Meaning of country of origin*

12. In Part I, after section 15 insert—

**15A Meaning of country of origin**

- (1) For the purposes of the provisions of this Act relating to the duration of copyright the country of origin of a work shall be determined as follows.
- (2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.
- (3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country.
- (4) If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then—
  - (a) if any of those countries is an EEA state, the country of origin is that country; and
  - (b) if none of those countries is an EEA state, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.
- (5) If the work is unpublished or is first published in a country which is not a Berne Convention country (and is not simultaneously

published in a Berne Convention country), the country of origin is—

- (a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in a Berne Convention country, that country;
- (b) if the work is—
  - (i) a work of architecture constructed in a Berne Convention country, or
  - (ii) an artistic work incorporated in a building or other structure situated in a Berne Convention country, that country;
- (c) in any other case, the country of which the author of the work is a national.

(6) In this section—

- (a) a “Berne Convention country” means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9th September 1886; and
- (b) references to simultaneous publication are to publication within 30 days of first publication. **22**.

13. In section 16(1) —

(a) after paragraph (b) insert —

**23**(ba) to rent the work to the public (see section 18A); **22**;

(b) for paragraph (d) substitute —

**23**(d) to communicate the work to the public (see section 20); **22**.

14. In section 17(4), for “, television broadcast or cable programme” and “, broadcast or cable programme” substitute **24** or broadcast **22**.

15. For section 18(2) and (3) substitute —

**25**(2) References in this Act to the issue to the public of copies of a work are to—

- (a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the copyright owner, or
- (b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.

(3) References in this Act to the issue to the public of copies of a work do not include—

- (a) any subsequent distribution, sale or hiring of copies previously put into circulation (but see section 18A: infringement by rental), or
  - (b) any subsequent importation of such copies into the Island or an EEA state,
- except so far as subsection (2)(a) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.
- (4) References in this Act to the issue of copies of a work include the issue of the original. **22**.

16. After section 18 insert —

**22 18A Infringement by rental of work to the public**

- (1) The rental of copies of the work to the public is an act restricted by the copyright in—
  - (a) a literary, dramatic or musical work,
  - (b) an artistic work, other than—
    - (i) a work of architecture in the form of a building or a model for a building, or
    - (ii) a work of applied art, or
  - (c) a film or a sound recording.
- (2) In this Act —
  - (a) “**rental**” means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, but does not include making available for the purpose of public performance, playing or showing in public or communication to the public;
  - (b) references to the rental of copies of a work include the rental of the original. **22**.

- 17. (1) In section 19(2)(b), omit “or cable programme”.
- (2) In section 19(3), for “, broadcast or cable programme” substitute **23** or broadcast **22**.

*Restricted act: communication to the public of the work*

18. For section 20 substitute —

**23 20 Infringement by communication to the public**

- (1) The communication to the public of the work is an act restricted by the copyright in—
  - (a) a literary, dramatic, musical or artistic work,

- (b) a sound recording or film, or
  - (c) a broadcast.
- (2) References in this Act to communication to the public are to communication to the public by electronic transmission, and in relation to a work include—
- (a) the broadcasting of the work;
  - (b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them. **22**.

19. In section 24(2), for “broadcasting or inclusion in a cable programme service” substitute **23** communication to the public **22**.

20. In section 27(6) —

- (a) after “provisions —” insert —

**23**section 31A(6) and (9) (making a single accessible copy for personal use),  
 section 31B(9) and (10) (multiple copies for visually impaired persons),  
 section 31C(2) (intermediate copies held by approved bodies) **22**;

- (b) for the entry for section 68(4) substitute —

**23**section 68(4) (copies made for purpose of broadcast),  
 section 70(2) (recording for purposes of time-shifting),  
 section 71(2) (photographs of broadcasts), or **22**.

*Making temporary copies*

21. After section 28 (and the heading “General”) insert —

**23 28A Making of temporary copies**

- (1) This section applies to copyright in —
- (a) a literary work, other than a computer program or a database,
  - (b) a dramatic, musical or artistic work,
  - (c) the typographical arrangement of a published edition,
  - (d) a sound recording, or
  - (e) a film.
- (2) Copyright to which this section applies is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—

- (a) a transmission of the work in a network between third parties by an intermediary; or
  - (b) a lawful use of the work;
- and which has no independent economic significance. **22**.

*Research and private study*

22. (1) For section 29(1) and (1A) substitute—
- 23**(1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.
  - (1A) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.
  - (1B) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work. **22**.
- (2) In section 29(2) for “mentioned in subsection (1)” substitute **23** of research or private study **22**.
- (3) After section 29(4) insert —
- 23**(4A) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 50BA). **22**.
- (4) Omit section 29(5).

*Criticism, review and news reporting*

23. (1) In section 30(1), after “acknowledgement” insert **23** and provided that the work has been made available to the public **22**.
- (2) After section 30(1) insert—
- 23**(1A) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including—
    - (a) the issue of copies to the public;
    - (b) making the work available by means of an electronic retrieval system;
    - (c) the rental or lending of copies of the work to the public;
    - (d) the performance, exhibition, playing or showing of the work in public;
    - (e) the communication to the public of the work,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act. **22**.

- (3) In section 30(3) for “, broadcast or cable programme” substitute **23** or broadcast where this would be impossible for reasons of practicality or otherwise **22**.
- (4) Omit section 30(4).

*Incidental inclusion of copyright material*

24. (1) In section 31(1) and (3), for “, broadcast or cable programme” substitute **23** or broadcast **22**.
- (2) In section 31(2), for “, broadcasting or inclusion in a cable programme service” substitute **23** or communication to the public **22**.

*Visual impairment*

25. After section 31 insert—

*Visual impairment*

**31A Making single accessible copy for personal use**

- (1) If a visually impaired person has lawful possession or lawful use of a copy (“the master copy”) of the whole or part of—
- (a) a literary, dramatic, musical or artistic work; or
- (b) a published edition,
- which is not accessible to him because of the impairment, it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use.
- (2) Subsection (1) does not apply—
- (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
- (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.
- (3) Subsection (1) does not apply in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

- (4) An accessible copy made under this section must be accompanied by—
  - (a) a statement that it is made under this section; and
  - (b) a sufficient acknowledgement.
- (5) If a person makes an accessible copy on behalf of a visually impaired person under this section and charges for it, the sum charged must not exceed the cost of making and supplying the copy.
- (6) If a person holds an accessible copy made under subsection (1) when he is not entitled to have it made under that subsection, the copy is to be treated as an infringing copy, unless he is a person falling within subsection (7)(b).
- (7) A person who holds an accessible copy made under subsection (1) may transfer it to—
  - (a) a visually impaired person entitled to have the accessible copy made under subsection (1); or
  - (b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within paragraph (a).
- (8) The transfer by a person of an accessible copy made under subsection (1) to another person is an infringement of copyright by the transferor unless the transferor has reasonable grounds for believing that the transferee is a person falling within subsection (7)(a) or (b) .
- (9) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with—
  - (a) it is to be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.
- (10) In subsection (9), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

### **31B Multiple copies for visually impaired persons**

- (1) If an approved body has lawful possession of a copy (“the master copy”) of the whole or part of—
  - (a) a commercially published literary, dramatic, musical or artistic work; or
  - (b) a commercially published edition, it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for the body to

make, or supply, accessible copies for the personal use of visually impaired persons to whom the master copy is not accessible because of their impairment.

- (2) Subsection (1) does not apply—
  - (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
  - (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.
- (3) Subsection (1) does not apply in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree.
- (4) Subsection (1) does not apply in relation to the supply of an accessible copy to a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.
- (5) An accessible copy made under this section must be accompanied by—
  - (a) a statement that it is made under this section; and
  - (b) a sufficient acknowledgement.
- (6) If an approved body charges for supplying a copy made under this section, the sum charged must not exceed the cost of making and supplying the copy.
- (7) An approved body making copies under this section must, if it is an educational establishment, ensure that the copies will be used only for its educational purposes.
- (8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this section must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).
- (9) If an approved body continues to hold an accessible copy made under subsection (1) when it would no longer be entitled to make or supply such a copy under that subsection, the copy is to be treated as an infringing copy.
- (10) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with—



- (a) it is to be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.

(11) In subsection (10), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

### **31C Intermediate copies and records**

(1) An approved body entitled to make accessible copies under section 31B may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only—

- (a) if and so long as the approved body continues to be entitled to make accessible copies of that master copy; and
- (b) for the purposes of the production of further accessible copies.

(2) An intermediate copy which is held in breach of subsection (1) is to be treated as an infringing copy.

(3) An approved body may transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under section 31B.

(4) The loan or transfer by an approved body of an intermediate copy to another person is an infringement of copyright by that body unless that body has reasonable grounds for believing that that person —

- (a) is another approved body which is entitled to make accessible copies of the work or published edition under section 31B; and
- (b) will use the intermediate copy only for the purposes of the production of further accessible copies.

(5) If an approved body charges for transferring the intermediate copy, the sum charged must not exceed the cost of the transfer.

(6) An approved body must—

- (a) keep records of accessible copies made under section 31B and of the persons to whom they are supplied;
- (b) keep records of any intermediate copy lent or transferred under this section and of the persons to whom it is lent or transferred; and
- (c) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.

- (7) Within a reasonable time of making an accessible copy under section 31B, or transferring an intermediate copy under this section, the approved body must—
- (a) notify each relevant representative body; or
  - (b) if there is no such body, notify the copyright owner.
- (8) A relevant representative body is a body which—
- (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and
  - (b) has given notice to the Department of the copyright owners, or the classes of copyright owner, represented by it.
- (9) The requirement to notify the copyright owner under subsection (7)(b) does not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner.

### **31D Licensing schemes**

- (1) Section 31B does not apply to the making of an accessible copy in a particular form if—
- (a) a licensing scheme operated by a licensing body is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form;
  - (b) the scheme is not unreasonably restrictive; and
  - (c) the scheme and any modification made to it have been notified to the Department by the licensing body.
- (2) A scheme is unreasonably restrictive if it includes a term or condition which—
- (a) purports to prevent or limit the steps that may be taken under section 31B or 31C; or
  - (b) has that effect.
- (3) But subsection (2) does not apply if—
- (a) the copyright work is no longer published by or with the authority of the copyright owner; and
  - (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.
- (4) If section 31B or 31C is displaced by a licensing scheme, sections 117 to 120 apply in relation to the scheme as if it were one to which those sections applied as a result of section 115.

**31E Limitations, etc. following infringement of copyright**

- (1) The Department may make an order under this section if it appears to it that the making of copies—
  - (a) under section 31B; or
  - (b) under a licence granted under a licensing scheme that has been notified under section 31D,has led to infringement of copyright on a scale which, in the Department's opinion, would not have occurred if section 31B had not been in force, or the licence had not been granted.
- (2) The order may prohibit one or more named approved bodies, or one or more specified categories of approved body, from—
  - (a) acting under section 31B; or
  - (b) acting under a licence of a description specified in the order.
- (3) The order may disapply—
  - (a) the provisions of section 31B; or
  - (b) the provisions of a licence, or a licensing scheme, of a description specified in the order,in respect of the making of copies of a description so specified.
- (4) If the Department proposes to make an order it must, before making it, consult—
  - (a) such bodies representing copyright owners, and
  - (b) such bodies representing visually impaired persons,as it thinks fit.
- (5) If the Department proposes to make an order which includes a prohibition it must, before making it, consult—
  - (a) if the proposed order is to apply to one or more named approved bodies, that body or those bodies;
  - (b) if it is to apply to one or more specified categories of approved body, such bodies representing approved bodies of that category or those categories as it thinks fit.
- (6) An approved body which is prohibited by an order from acting under a licence may not apply to the Tribunal under section 119(1) in respect of a refusal or failure by a licensing body to grant such a licence.

**31F Sections 31A to 31E: supplemental**

- (1) For the purposes of sections 31A to 31E and this section —

- (a) a copy of a copyright work (other than an accessible copy made under section 31A or 31B) is to be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired;
- (b) “accessible copy”, in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work;
- (c) an accessible copy may include facilities for navigating around the version of the copyright work but may not include—
  - (i) changes that are not necessary to overcome problems caused by visual impairment; or
  - (ii) changes which infringe the right (provided by section 80) not to have the work subjected to derogatory treatment.

(2) In sections 31A to 31E and this section —

“approved body” means an educational establishment or a body that is not conducted for profit;

“visually impaired person” means a person—

- (a) who is blind;
- (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
- (c) who is unable, through physical disability, to hold or manipulate a book; or
- (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.

(3) The Department may by regulations prescribe—

- (a) the form in which; or
- (b) the procedure in accordance with which,

any notice required under section 31C(7) or (8), or 31D(1), must be given. **22**.

*Things done for the purposes of instruction or examination*

26. (1) For section 32(1) and (2) substitute —

- 22**(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying—

- (a) is done by a person giving or receiving instruction,  
 (b) is not done by means of a reprographic process, and  
 (c) is accompanied by a sufficient acknowledgement,  
 and provided that the instruction is for a non-commercial purpose.
- (2) Copyright in a sound recording, film or broadcast is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying—
- (a) is done by a person giving or receiving instruction, and  
 (b) is accompanied by a sufficient acknowledgement,  
 and provided that the instruction is for a non-commercial purpose.
- (2A) Copyright in a literary, dramatic, musical or artistic work which has been made available to the public is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying—
- (a) is fair dealing with the work,  
 (b) is done by a person giving or receiving instruction,  
 (c) is not done by means of a reprographic process, and  
 (d) is accompanied by a sufficient acknowledgement.
- (2B) The provisions of section 30(1A) (works made available to the public) apply for the purposes of subsection (2A) as they apply for the purposes of section 30(1).<sup>22</sup>
- (2) in section 32(3), after “answering the questions” insert <sup>23</sup>, provided that the questions are accompanied by a sufficient acknowledgement<sup>22</sup>.
- (3) After section 32(3) insert —
- <sup>23</sup>(3A) No acknowledgement is required in connection with copying as mentioned in subsection (1), (2) or (2A), or in connection with anything done for the purposes mentioned in subsection (3), where this would be impossible for reasons of practicality or otherwise.<sup>22</sup>
- (4) In section 32(5), for the words from “For this purpose” onwards substitute —
- <sup>23</sup>For this purpose “dealt with” means—
- (a) sold or let for hire, offered or exposed for sale or hire; or  
 (b) communicated to the public, unless that communication, by virtue of subsection (3), is not an infringement of copyright.<sup>22</sup>

*Recordings by educational establishments of broadcasts*

27. In section 34(2), for “, broadcast or cable programme” substitute **46** or broadcast **22**.
28. (1) In the heading to section 35, omit “and cable programmes”.
- (2) In section 35(1) —
- (a) omit “or cable programme” (in both places);
- (b) after “included in it” insert **43**, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial **22**.
- (3) After section 35(1) insert —
- 43**(1A) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of subsection (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.”.
- (4) In section 35(3), for the words from “or offered” onwards substitute **44**, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises. **22**.

*Reprographic copying by educational establishments*

29. (1) In section 36(1), for “or in the typographical arrangement” substitute **43** provided that they are accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose **22**.
- (2) After section 36(1) insert—
- 43**(1A) No acknowledgement is required in connection with the making of copies as mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.
- (1B) Reprographic copies of passages from published editions may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the typographical arrangement of the edition. **22**.
- (3) In section 36(4), omit “literary, dramatic or musical”.
- (4) In section 36(5), for the words from “or offered” onwards substitute **44** offered or exposed for sale or hire or communicated to the public **22**.

*Copying by librarians*

30. For sections 38(2)(a) and 39(2)(a) substitute —

- (a) that copies are supplied only to persons satisfying the librarian that they require them for the purposes of—
- (i) research for a non-commercial purpose, or
- (ii) private study,
- and will not use them for any other purpose; **22**.
31. For section 43(3)(a) substitute —

- (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for the purposes of—
- (i) research for a non-commercial purpose, or
- (ii) private study,
- and will not use them for any other purpose; **22**.

*Observing, studying and testing of computer programs*

32. In section 50A(2), after “50B” insert **23**, 50BA **22**.

33. After section 50B insert —

**23 50BA Observing, studying and testing of computer programs**

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.
- (2) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 163A, void). **22**.

34. In section 50C(3), for “section 50A or 50B” substitute **23**section 50A, 50B or 50BA **22**.
35. In section 51(2), for “, broadcast or cable programme service” substitute **23**or communicate to the public **22**.
36. In section 57(1)(b)(ii) and (2)(b) for “50 years” substitute **23**70 years **22**.
37. (1) In section 58(1)(b), for “ broadcasting or including in a cable programme service” substitute **23**communicating to the public **22**.
- (2) In section 58(2)(a) omit “or cable programme”.
38. In section 59(2) —
- (a) for “broadcasting or inclusion in a cable programme service” substitute **23**communication to the public **22**;

- (b) for “, broadcast or cable programme” substitute **63** or communication to the public **62**.

*Recordings of folksongs*

39. For section 61(4)(a) substitute —

- 63**(a) that copies are only supplied to persons satisfying the archivist that they require them for the purposes of—
- (i) research for a non-commercial purpose, or
  - (ii) private study,
- and will not use them for any other purpose, and **62**.

*Representation of artistic works on public display*

40. (1) In section 62(2)(c), for “broadcasting or including in a cable programme service” substitute **63** making a broadcast of **62**.
- (2) In section 62(3), for “broadcasting or inclusion in a cable programme service” substitute **63** communication to the public **62**.

*Advertisement of sale of artistic work*

41. In section 63(2), for “or distributed” substitute **63**, distributed or communicated to the public **62**.
42. After section 66 insert—

**63** *Miscellaneous: films and sound recordings*

**66A** **Films: acts permitted on assumptions as to expiry of copyright, &c.**

- (1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when—
- (a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 13A(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained), and
  - (b) it is reasonable to assume—
    - (i) that copyright has expired, or
    - (ii) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Subsection (1)(b)(ii) does not apply in relation to—
- (a) a film in which Crown copyright subsists, or
  - (b) a film in which copyright originally vested in an international organisation by virtue of section 161 and in



- respect of which an order under that section specifies a copyright period longer than 70 years. **22**.
43. In section 67(2), for the words from “and (b)” onwards substitute —
- 23**(b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,
  - (c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and
  - (d) that the proceeds from any goods or services sold by, or on behalf of, the organisation —
    - (i) in the place where the sound recording is heard, and
    - (ii) on the occasion when the sound recording is played, are applied solely for the purposes of the organisation. **22**.
44. (1) In the heading before section 68, omit “and cable programmes”.  
 (2) In the heading to section 68, omit “or cable programme”.  
 (3) In section 68(1) omit “or include in a cable programme service”.  
 (4) In section 68(2), omit “or cable programme”.  
 (5) In section 68(3)(b), omit “or, as the case may be, including it in a cable programme service”.
45. In the heading to section 69, omit “and cable programmes”.

*Recording for purposes of time-shifting*

46. In section 70 —
- (a) at the beginning insert **23**(1) **22**;
  - (b) after “The making” insert **23** in domestic premises **22**;
  - (c) omit “or cable programme” (in each place);
  - (d) at the end insert —
    - 23**(2) The making by or on behalf of an educational establishment of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time for the educational purposes of that establishment does not infringe any copyright in the broadcast or in any work included in it, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.
    - (3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with—

- (a) it shall be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.
- (4) In subsection (3), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public. **22**.

*Photographs of broadcasts*

47. For section 71 substitute —

**71. Photographs of broadcasts**

- (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with—
  - (a) it shall be treated as an infringing copy for the purposes of that dealing; and
  - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.
- (3) In subsection (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public. **22**.

*Public showing or playing of broadcast*

48. (1) In the heading to section 72 omit “or cable programme”.
- (2) For section 72(1) substitute —

- 72**(1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in —
  - (a) the broadcast;
  - (b) any sound recording (except so far as it is an excepted sound recording) included in it; or
  - (c) any film included in it. **22**.
- (3) After section 72(1) insert —
  - 72**(1A) For the purposes of this Act an “excepted sound recording” is a sound recording—
    - (a) whose author is not the author of the broadcast in which it is included; and

- (b) which is a recording of music with or without words spoken or sung.
- (1B) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public is necessary for the purposes of—
- (a) repairing equipment for the reception of broadcasts;
  - (b) demonstrating that a repair to such equipment has been carried out; or
  - (c) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire. **22**.
- (4) In section 72(2)(b)(i) and (3)(b), omit “or programme”.
- (5) In section 72(3)(b), omit “or programmes”.
- (6) In section 72(4), omit “or inclusion of the programme in a cable programme service” and “or programme”.

*Reception and re-transmission of broadcasts*

49. (1) In the heading to section 73, for “broadcast in cable programme service” substitute **63** wireless broadcast by cable **22**.
- (2) In section 73(1) —
- (a) for “broadcast” substitute **63** wireless broadcast **22**;
  - (b) for the words from “, by reception” onwards substitute **63** received and immediately re-transmitted by cable **22**.
- (3) In section 73(2), for “the cable programme service is provided” substitute **63** it is re-transmitted by cable **22**.
- (4) In section 73(3) —
- (a) for “the cable programme service is provided” substitute **63** it is re-transmitted by cable **22**;
  - (b) for “as a programme in a cable programme service” substitute **63** by cable **22**.
- (5) After section 73(3) insert —
- 63**(4) In this section references to re-transmission by cable include the transmission of microwave energy between terrestrial fixed points. **22**.

*Sub-titling of broadcasts*

50. (1) In the heading to section 74, omit “or cable programme”.
- (2) In section 74(1), omit “television” and “or cable programmes” (in each place).
51. In section 75(1), omit “or cable programme” (in each place).

52. (1) In section 77(2)(a), for “, broadcast or included in a cable programme service” substitute **63** or communicated to the public **62**.
- (2) In section 77(4)(a), for “broadcast or included in a cable programme service” substitute **63** communicated to the public **62**.
- (3) In section 77(6), for “, broadcast or included in a cable programme service” substitute **63** or communicated to the public **62**.
- (4) In section 77(7)(c), for “, broadcast or cable programme” substitute **63** or communication to the public **62**.
53. (1) In section 79(3), for the words from “vested” onwards substitute **63** vested in the author’s or director’s employer by virtue of section 11(2) (works produced in the course of employment). **62**.
- (2) In section 79(4) —
- (a) in paragraphs (a) and (b), for “, broadcast or cable programme” substitute **63** or broadcast **62**;
- (b) for paragraph (h) substitute —
- 63**(h) section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c.). **62**.
54. (1) In section 80(3)(a) and (6)(a), for “, broadcasts or includes in a cable programme service” substitute **63** or communicates to the public **62**.
- (2) In section 80(4)(a), for “ or broadcasts or includes in a cable programme service” substitute **63** or communicates to the public **62**.
- (3) In section 80(6), omit the words following paragraph (b).
55. In section 81(5), for “section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author)” substitute **63** section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c.) **62**.
56. In section 82(1)(a) —
- (a) after “author’s” insert **63** or director’s **62**;
- (b) omit the words from “or in the” onwards.
57. In section 84(3)(a) and (b), for “, broadcasts it or includes it in a cable programme service” substitute **63** or communicates it to the public **62**.
58. (1) In section 85(1)(c), for “broadcast or included in a cable programme service” substitute **63** communicated to the public **62**.
- (2) In section 85(2) —
- (a) in paragraph (a), for “, broadcast or cable programme” substitute **63** or broadcast **62**;
- (b) for paragraph (e) substitute —
- 63**(e) section 57 or 66A (acts permitted on assumptions as to expiry of copyright etc.). **62**.
59. After section 93 insert —

**93A Presumption of transfer of rental right in case of film production agreement**

- (1) Where an agreement concerning film production is concluded between an author and a film producer, the author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the author's work in the film.
- (2) In this section "author" means an author, or prospective author, of a literary, dramatic, musical or artistic work.
- (3) Subsection (1) does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.
- (4) Where this section applies, the absence of signature by or on behalf of the author does not exclude the operation of section 91(1) (effect of purported assignment of future copyright).
- (5) The reference in subsection (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.
- (6) Section 93B (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

**93B Right to equitable remuneration where rental right transferred**

- (1) Where an author to whom this section applies has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

The authors to whom this section applies are—

- (a) the author of a literary, dramatic, musical or artistic work, and
  - (b) the principal director of a film.
- (2) The right to equitable remuneration under this section may not be assigned by the author except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

- (3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.
- (4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 93C (reference of amount to Tribunal).
- (5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.
- (6) References in this section to the transfer of rental right by one person to another include any arrangement having that effect, whether made by them directly or through intermediaries.
- (7) In this section a “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration under this section on behalf of more than one author.

### 93C Equitable remuneration: reference of amount to Tribunal

- (1) In default of agreement as to the amount payable by way of equitable remuneration under section 93B, the person by or to whom it is payable may apply to the Tribunal to determine the amount payable.
- (2) A person to or by whom equitable remuneration is payable under that section may also apply to the Tribunal—
  - (a) to vary any agreement as to the amount payable, or
  - (b) to vary any previous determination of the Tribunal as to that matter; but except with the special leave of the Tribunal no such application may be made within 12 months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

- (3) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the author to the film or sound recording.
- (4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

- (5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under this section. **22**.

*Enforcement*

60. (1) After section 97(1) insert—

**23**(1A) Where in an action for infringement of copyright it is shown that the defendant knew, or had reason to believe, that he was committing an infringement, the damages awarded to the claimant shall be appropriate to the actual prejudice he suffered as a result of the infringement.

(1B) The High Court —

- (a) in awarding such damages shall take into account all appropriate aspects, including in particular—
- (i) the negative economic consequences, including any lost profits, which the claimant has suffered;
  - (ii) any unfair profits made by the defendant; and
  - (iii) elements other than economic factors, including the moral prejudice caused to the claimant by the infringement; or
- (b) may where appropriate award such damages on the basis of the royalties or fees which would have been due had the defendant obtained a licence. **22**.

- (2) In section 97(2), at the beginning insert **23** Subject to subsections (1A) and (1B), **22**.

61. After section 100 insert —

**23** 100A      **Certain infringements actionable by non-exclusive licensee**

- (1) A non-exclusive licensee may bring an action for infringement of copyright if—
- (a) the infringing act was directly connected to a prior licensed act of the licensee; and
  - (b) the licence—
    - (i) is in writing and is signed by or on behalf of the copyright owner; and
    - (ii) expressly grants the non-exclusive licensee a right of action under this section.
- (2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.

- (3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Act to the copyright owner shall be construed accordingly.
- (4) In an action brought by a non-exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.
- (5) Section 101(1) to (4) shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.
- (6) In this section a “non-exclusive licensee” means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner. **22**.

62. After section 102(2) insert —

- 63**(3) Subsections (1A) and (1B) of section 97 apply to a breach of statutory duty under this section as they apply to an infringement of copyright. **22**.

63. (1) In section 104(2)(a) and (5)(a), for “author or director” substitute **63** director or producer **22**.

(2) In section 104(5) —

(a) for “, broadcast or included in a cable programme service” (in both places) substitute **63** or communicated to the public **22**;

(b) after paragraph (a) insert—

**63**(aa) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film, or **22**;

(c) for “, broadcast or included in a cable programme service” substitute **63** or broadcast **22**.

(3) After section 104(5) insert —

- 63**(6) For the purposes of this section, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he was the principal director of the film. **22**.

64. (1) After section 106(2) insert—

**63**(2A) A person who infringes copyright in a work by communicating the work to the public—

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,



commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work. **22**.

(2) In section 106(3), for “broadcast or cable programme” substitute **23** communication to the public **22**.

(3) After section 106(4) insert—

**23**(4A) A person guilty of an offence under subsection (2A) is liable—

- (a) on summary conviction to custody for a term not exceeding 3 months or a fine not exceeding £5,000, or both;
- (b) on conviction on information to custody for a term not exceeding 2 years or a fine, or both. **22**.

(4) In section 106(5), for “6 months” substitute **23** 3 months **22**.

65. (1) In section 108(1)(a), for “section 106(l)(a), (b), (d)(iv) or (e)” substitute **23** section 106(1), (2) or (2A) **22**.

(2) In section 108(3), for “section 106(l)” substitute **23** section 106(1), (2) or (2A) **22**.

(3) In section 108(4), after “buildings,” insert **23** fixed or **22**.

66. For section 115 substitute —

**23** 115. Licensing schemes to which sections 116 to 121 apply

Sections 116 to 121 (references and applications with respect to licensing schemes) apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for—

- (a) copying the work,
- (b) rental of copies of the work to the public,
- (c) performing, showing or playing the work in public, or
- (d) communicating the work to the public;

and references in those sections to a licensing scheme shall be construed accordingly. **22**.

67. For section 122 substitute —

**23** 122. Licences to which sections 123 to 126 apply

Sections 123 to 126 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorise—

- (a) copying the work,
- (b) rental of copies of the work to the public,
- (c) performing, showing or playing the work in public, or

- (d) communicating the work to the public;  
and references in those sections to a licence shall be construed accordingly. **22**.
68. (1) In the heading to section 129, omit “or cable programmes”.  
(2) In section 129(1), omit “or cable programmes”.  
(3) In section 129(2) omit “or cable programme”.
69. (1) In section 130(1), for “, broadcasts or cable programmes” substitute **23** or broadcasts **22**.  
(2) In section 130(3)(b), for “, broadcast or cable programme” substitute **23** or broadcast **22**.
70. In section 131(2) —  
(a) for “, broadcasts or cable programmes” substitute **23** or broadcasts **22**;  
(b) for “, broadcast or cable programme” substitute **23** or broadcast **22**.
71. In section 132(1), omit “or cable programme service”, “or cable programme” (in the second place) and “or included in a cable programme service”.
72. (1) In the heading before section 133A omit “etc.”.  
(2) In section 133A omit “or cable programme service” (in each place).  
(3) In section 133A(5), before the definition of “needletime” insert —  
**24** “**broadcast**” does not include any broadcast which is a transmission of the kind specified in section 6(1A)(b) or (c); **22**.
73. In section 133B(2) omit “or cable programme service”.
74. In section 135C(1) and (4), omit the words “or cable programme service” (in each place).
75. In section 133E(1)(a), omit “or cable programme service”.
76. In section 133H(1)(b), omit “or cable programme service” (in each place).
77. In section 141(1)(a) and (d), omit “or cable programme service”.
78. In section 144 —  
(a) before paragraph (a) insert —  
**25** (za) section 93C (application to determine amount of equitable remuneration under section 93B); **22**;  
(b) in paragraph (cc), omit “or cable programme services”.
79. In section 146A(1)(a), for “ broadcasting a work or including a work in a cable programme service” substitute **26** communicating a work to the public **22**.
80. In section 148(1)(c), omit “or cable programme” and “or the cable programme was sent”.
81. (1) In section 149(3), for the paragraph referring to provisions of section 12 substitute —

- section 12 (duration of copyright), and section 9(4) (meaning of “unknown authorship”) so far as it applies for the purposes of section 12, and 22.
- (2) In section 149(5), omit paragraph (c).
82. (1) In section 151(1), omit the words from “, and a cable” to “sent from,”.
- (2) In section 151(2), omit “or cable programme” and “or, as the case may be, sent from”.
83. In section 152(1)(d), omit “or cable programmes sent from” (in each place).
84. In section 158(4)(b), for “, live broadcast or live cable programme” substitute 22 or live broadcast 22.

*Circumvention of protection measures*

85. (1) For the heading before section 163 substitute —

22 *Circumvention of protection measures* 22.

- (2) For section 163 substitute —

**22 163. Circumvention of technical devices applied to computer programs**

- (1) This section applies where—
- (a) a technical device has been applied to a computer program; and
- (b) a person knowing or having reason to believe that it will be used to make infringing copies—
- (i) manufactures for sale or hire, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire or has in his possession for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of the technical device; or
- (ii) publishes information intended to enable or assist persons to remove or circumvent the technical device.
- (2) The following persons have the same rights against the person specified in subsection (1)(b) as a copyright owner has in respect of an infringement of copyright—
- (a) a person—
- (i) issuing to the public copies of, or
- (ii) communicating to the public,

- the computer program to which the technical device has been applied;
- (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a);
- (c) the owner or exclusive licensee of any intellectual property right in the technical device applied to the computer program.
- (3) The rights conferred by subsection (2) are concurrent, and sections 100(3) and 101(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (4) Further, the persons in subsection (2) have the same rights under section 98 or 99 (delivery up or seizure of certain articles) in relation to any such means as is referred to in subsection (1) which a person has in his possession, custody or control with the intention that it should be used to facilitate the unauthorised removal or circumvention of any technical device which has been applied to a computer program, as a copyright owner has in relation to an infringing copy.
- (5) The rights conferred by subsection (4) are concurrent, and section 101(5) shall apply, as respects anything done under section 98 or 99 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 98 or 99, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (6) In this section references to a technical device in relation to a computer program are to any device intended to prevent or restrict acts that are not authorised by the copyright owner of that computer program and are restricted by copyright.
- (7) The following provisions apply in relation to proceedings under this section as in relation to proceedings under this Act relating to copyright—
- (a) sections 103 to 105 (presumptions as to certain matters relating to copyright); and
- (b) section 52 of the High Court Act 1991 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);
- and section 113 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

**163ZA Circumvention of technological measures**

- (1) This section applies where—
- (a) effective technological measures have been applied to a copyright work other than a computer program; and
  - (b) a person does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective.
- (2) This section does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner.
- (3) The following persons have the same rights against the person specified in subsection (1)(b) as a copyright owner has in respect of an infringement of copyright—
- (a) a person—
    - (i) issuing to the public copies of, or
    - (ii) communicating to the public,the work to which effective technological measures have been applied; and
  - (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a).
- (4) The rights conferred by subsection (3) are concurrent, and sections 100(3) and 101(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (5) The following provisions apply in relation to proceedings under this section as in relation to proceedings under this Act relating to copyright—
- (a) sections 103 to 105 (presumptions as to certain matters relating to copyright); and
  - (b) section 52 of the High Court Act 1991 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).

**163ZB Devices and services designed to circumvent technological measures**

- (1) A person commits an offence if he—
- (a) manufactures for sale or hire, or

- (b) imports otherwise than for his private and domestic use, or
- (c) in the course of a business—
- (i) sells or lets for hire, or
  - (ii) offers or exposes for sale or hire, or
  - (iii) advertises for sale or hire, or
  - (iv) possesses, or
  - (v) distributes, or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,
- any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.
- (2) A person commits an offence if he provides, promotes, advertises or markets—
- (a) in the course of a business, or
  - (b) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,
- a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.
- (3) Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services—
- (a) in the interests of national security; or
  - (b) for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution,
- and in this subsection “intelligence services” has the meaning given in section 75 of the Anti-Terrorism and Crime Act 2003 .
- (4) A person guilty of an offence under subsection (1) or (2) is liable—
- (a) on summary conviction, to custody for a term not exceeding 3 months, or to a fine not exceeding £5,000, or both;
  - (b) on conviction on information to a fine or custody for a term not exceeding 2 years, or both.
- (5) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that—
- (a) the device, product or component; or
  - (b) the service,

enabled or facilitated the circumvention of effective technological measures.

### **163ZC Devices and services designed to circumvent technological measures: search warrants and forfeiture**

- (1) The provisions of sections 164B (search warrants) and 164C (forfeiture of unauthorised decoders) apply to offences under section 163ZB with the following modifications.
- (2) In section 164B the reference to an offence under section 164A(1) shall be construed as a reference to an offence under section 163ZB(1) or (2).
- (3) In sections 164C(2)(a) and 164D(15) the references to an offence under section 164A(1) shall be construed as a reference to an offence under section 163ZB(1).
- (4) In sections 164C and 164D references to unauthorised decoders shall be construed as references to devices, products or components for the purpose of circumventing effective technological measures.

### **163ZD Rights and remedies in respect of devices and services designed to circumvent technological measures**

- (1) This section applies where—
  - (a) effective technological measures have been applied to a copyright work other than a computer program; and
  - (b) a person manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or has in his possession for commercial purposes any device, product or component, or provides services which—
    - (i) are promoted, advertised or marketed for the purpose of the circumvention of, or
    - (ii) have only a limited commercially significant purpose or use other than to circumvent, or
    - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,those measures.
- (2) The following persons have the same rights against the person specified in subsection (1)(b) as a copyright owner has in respect of an infringement of copyright—
  - (a) a person—

- (i) issuing to the public copies of, or
    - (ii) communicating to the public,the work to which effective technological measures have been applied;
  - (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a); and
  - (c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.
- (3) The rights conferred by subsection (2) are concurrent, and sections 100(3) and 101(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (4) Further, the persons in subsection (2) have the same rights under section 98 or 99 (delivery up or seizure of certain articles) in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.
- (5) The rights conferred by subsection (4) are concurrent, and section 101(5) shall apply, as respects anything done under section 98 or 99 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 98 or 99, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under this Act relating to copyright—
- (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and
  - (b) section 52 of the High Court Act 1991 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);
- and section 113 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).
- (7) In section 97(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to



believe that his acts enabled or facilitated an infringement of copyright.

**163ZE Remedy where effective technological measures prevent permitted acts**

(1) In this section—

“permitted act” means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a provision of this Act listed in Schedule 1A;

“voluntary measure or agreement” means —

- (a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program, or
- (b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act.

(2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Department.

(3) Following receipt of a notice of complaint, the Department may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Department to be requisite or expedient for the purpose of—

- (a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or
- (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.

(4) The Department may also give directions—

- (a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered to it;

- (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to it; and
- (c) generally as to the procedure to be followed in relation to a complaint made under this section;

and shall publish directions given under this subsection in such manner as in its opinion will secure adequate publicity for them.

- (5) It shall be the duty of any person to whom a direction is given under subsection (3)(a) or (b) to give effect to that direction.
- (6) The obligation to comply with a direction given under subsection (3)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).
- (7) Any direction under this section may be varied or revoked by a subsequent direction under this section.
- (8) Any direction given under this section shall be in writing.
- (9) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (10) This section applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a class of persons, where the class of persons have lawful access to the work.

### **163ZF Interpretation of sections 296ZA to 296ZE**

- (1) In sections 163ZA to 163ZE, “technological measures” are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.
- (2) Such measures are “effective” if the use of the work is controlled by the copyright owner through—
  - (a) an access control or protection process such as encryption, scrambling or other transformation of the work, or
  - (b) a copy control mechanism,
 which achieves the intended protection.
- (3) In this section, the reference to—

- (a) protection of a work is to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright; and
- (b) use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright. **22**.

*Rights management information*

86. After section 163ZF insert —

**22** *Rights management information*

**163ZG Electronic rights management information**

- (1) This section applies where a person, knowingly and without authority, removes or alters electronic rights management information which—
  - (a) is associated with a copy of a copyright work, or
  - (b) appears in connection with the communication to the public of a copyright work, and
 where that person knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.
- (2) This section also applies where a person, knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information—
  - (a) associated with the copies, or
  - (b) appearing in connection with the communication to the public of the work,
 has been removed or altered without authority and where that person knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.
- (3) A person issuing to the public copies of, or communicating, the work to the public, has the same rights against the persons specified in subsections (1) and (2) as a copyright owner has in respect of an infringement of copyright.
- (4) The copyright owner or his exclusive licensee, if he is not the person issuing to the public copies of, or communicating, the work to the public, also has the same rights against the persons specified in subsections (1) and (2) as he has in respect of an infringement of copyright.

- (5) The rights conferred by subsections (3) and (4) are concurrent, and sections 100(3) and 101(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under this Act in relation to copyright —
- (a) sections 103 to 105 (presumptions as to certain matters relating to copyright); and
  - (b) section 52 of the High Court Act 1991 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).
- (7) In this section “rights management information” means —
- (a) any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or
  - (b) information about the terms and conditions of use of the work,
- and any numbers or codes that represent such information. <sup>22</sup>.

87. For section 163A(1)(c) substitute —

- <sup>23</sup>(c) the observing, studying or testing of the functioning of the program in accordance with section 50BA. <sup>22</sup>.

88. In section 164(1), omit “or cable programme”.

89. In section 164A(3), omit “or cable programme”.

#### *Unauthorised decoders*

90. After section 164A insert—

#### <sup>24</sup>164B **Unauthorised decoders: search warrants**

- (1) Where a justice of the peace is satisfied by information on oath given by a constable that there are reasonable grounds for believing—
- (a) that an offence under section 164A(1) has been or is about to be committed in any premises, and
  - (b) that evidence that such an offence has been or is about to be committed is in those premises,
- he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

- (2) The power conferred by subsection (1) does not extend to authorising a search for material of the kinds mentioned in section 12(2) of the Police Powers and Procedures Act 1998 (certain classes of personal or confidential material).
- (3) A warrant under subsection (1)—
  - (a) may authorise persons to accompany any constable executing the warrant, and
  - (b) remains in force for 28 days from the date of its issue.
- (4) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 164A(1) has been or is about to be committed.
- (5) In this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

#### **164C Forfeiture of unauthorised decoders**

- (1) Where unauthorised decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the unauthorised decoders.
- (2) For the purposes of this section “relevant offence” means—
  - (a) an offence under section 164A(1) (criminal liability for making, importing, etc. unauthorised decoders),
  - (b) an offence under the Consumer Protection (Trade Descriptions) Act 1970, or
  - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made—
  - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorised decoders, to that court, or
  - (b) where no application for the forfeiture of the unauthorised decoders has been made under paragraph (a), by way of complaint to a court of summary jurisdiction.
- (4) On an application under this section, the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of

the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

- (6) Any person aggrieved by an order made under this section by a court of summary jurisdiction, or by a decision of such a court not to make such an order, may appeal against that order or decision to the High Court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 109 of the Summary Jurisdiction Act 1989 (statement of case)).
- (8) Subject to subsection (9), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 165 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate. **22**.

91. In section 165(1)(a), omit “or cable programme”.

92. In section 166(2) and (3), omit the words “or cable programme”.

*Meaning of EEA national and EEA state*

93. (1) After section 169 insert—

**169A Meaning of EEA national and EEA state**

- (1) Subject to subsection (2), in this Act —  
 “**the EEA**” means the European Economic Area;  
 “**EEA state**” means a member State of the European Union, Iceland, Liechtenstein or Norway.
- (2) References in this Act to a person being a national of an EEA state shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA state or of the Island.
- (3) References in this Act to publishing anything or putting anything into circulation in the EEA include publishing it or putting it into circulation in the Island. **22**.

94. In section 172(4)(a)(ii), (b)(iv) and (c)(ii), for “broadcasting of the work or its inclusion in a cable programme service” substitute **“communication to the public of the work”**.
95. In section 174 —
- (a) at the appropriate place insert —
- “producer”**, in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;
- (b) for the definition of “rental” substitute —
- “rental right”** means the right of a copyright owner to authorise or prohibit the rental of copies of the work (see section 18A);
- (c) in the definition of “wireless telegraphy”, at the end insert **“**, but does not include the transmission of microwave energy between terrestrial fixed points**”**.
96. In section 175 —
- (a) at the appropriate places insert —
- |  |                 |
|--|-----------------|
| <b>“accessible copy”</b>                                     | section 31F(1); |
| <b>“approved body”</b>                                       | section 31F(3); |
| <b>“country of origin”</b>                                   | section 15A;    |
| <b>“the EEA, EEA state and national of an EEA state”</b>     | section 169A;   |
| <b>“excepted sound recording”</b>                            | section 72(1A); |
| <b>“producer (in relation to a sound recording or film)”</b> | section 174;    |
| <b>“rental right”</b>  | section 174;    |
| <b>“visually impaired person”</b>                            | section 31F(3); |
- (b) in the entry relating to “film”, for “section 5” substitute **“section 5A”**;
- (c) omit the entry relating to “cable programme, cable programme service (and related expressions)”;
- (d) in the entry relating to “rental”, for “section 174” substitute **“section 18A(2)”**.
97. In Schedule 1 —
- (a) in the closing words of paragraph 9, for “section 14(2)” substitute **“section 14(5)”**;
- (b) omit paragraph 14(3).

98. After Schedule 1 insert, as Schedule 1A, the following Schedule —

**SCHEDULE 1A**

**PERMITTED ACTS TO WHICH SECTION 163ZE APPLIES**

- section 29 (research and private study)
- section 31A(6) and (9) (making a single accessible copy for personal use),
- section 31B(9) and (10) (multiple copies for visually impaired persons),
- section 31C(2) (intermediate copies held by approved bodies),
- section 32(1), (2) and (3) (things done for purposes of instruction or examination)
- section 35 (recording by educational establishments of broadcasts)
- section 36 (reprographic copying by educational establishments of passages from published works)
- section 38 (copying by librarians: articles in periodicals)
- section 39 (copying by librarians: parts of published works)
- section 41 (copying by librarians: supply of copies to other libraries)
- section 42 (copying by librarians or archivists: replacement copies of works)
- section 43 (copying by librarians or archivists: certain unpublished works)
- section 44 (copy of work required to be made as condition of export)
- section 45 (Tynwald and judicial proceedings)
- section 46 (inquiries)
- section 47 (material open to public inspection or on official register)
- section 48 (material communicated to the Crown in the course of public business)
- section 49 (public records)
- section 50 (acts done under statutory authority)
- section 61 (recordings of folksongs)
- section 68 (incidental recording for purposes of broadcast)
- section 69 (recording for purposes of supervision and control of broadcasts)



section 70 (recording for purposes of time-shifting)

section 71 (photographs of broadcasts)

section 74 (provision of sub-titled copies of broadcast)

section 75 (recording for archival purposes) .

**SCHEDULE 2**

[regulation 4]

**TRANSITIONAL PROVISIONS****PART 1****GENERAL***Application of this Part*

1. This Part has effect subject to any contrary provision in Part 2 or 3.

*Interpretation*

2. (1) In this Schedule —
  - (a) “the 1991 provisions” means the provisions of the Act as they stood immediately before commencement (including the provisions of Schedule 1 to the Act continuing the effect of earlier enactments);
  - (b) “the Act” means the Copyright Act 1991;
  - (c) “commencement”, without more, means the date on which Schedule 1 comes into operation;
  - (d) “existing”, in relation to a work, means made before commencement;
  - (e) “existing copyright work” means a work in which copyright subsisted immediately before commencement;
  - (f) “moral rights” means the rights conferred by Part IV of the Act;
  - (g) “new right” means a right arising by virtue of these Regulations, in relation to a copyright work, to authorise or prohibit an act.
- (2) Expressions used in this Schedule which are defined for the purposes of the Act, in particular references to the copyright owner, have the same meanings as in the Act.
- (3) For the purposes of this Schedule a work of which the making extended over a period shall be taken to have been made when its making was completed.

*Application of Schedule 1*

3. Schedule 1 applies to copyright works made before or after commencement.

*Permitted acts*

4. The provisions of Part III (acts permitted in relation to copyright works) of the provisions continue to apply to anything done after commencement in

completion of an act begun before commencement which was permitted by those provisions.

*General rules*

5. No act done before commencement shall be regarded as an infringement of copyright, or as giving rise to any right to remuneration arising by virtue of Schedule 1.

*Authorship of films*

6. (1) Paragraph 6 of Schedule 1 applies as from commencement in relation to films made on or after commencement.
- (2) It is not an infringement of any right which the principal director has by virtue of Schedule 1 to do anything after commencement in pursuance of arrangements for the exploitation of the film made before commencement.

*Savings for existing agreements*

7. (1) Nothing in Schedule 1 affects any agreement made before commencement.
- (2) No act done after commencement, in pursuance of an agreement made before commencement, shall be regarded as an infringement of any new right arising by virtue of these Regulations.

*New rights: effect of pre-commencement authorisation of copying*

8. Where before commencement the owner or prospective owner of copyright in a literary, dramatic, musical or artistic work has authorised a person to make a copy of the work, any new right in relation to that copy vests on commencement in the person so authorised, subject to any agreement to the contrary.

*New rights: effect of pre-commencement film production agreement*

9. (1) Section 93A (presumption of transfer of rental right in case of production agreement) applies in relation to an agreement concluded before commencement, but with the omission of subsection (3) (exclusion of presumption in relation to screenplay, dialogue or music specifically created for the film).
- (2) Section 93B (right to equitable remuneration where rental right transferred) has effect accordingly, but subject to paragraph 10.

*Right to equitable remuneration applicable to rental*

10. No right to equitable remuneration under section 93B (right to equitable remuneration where rental right transferred) arises—
- (a) in respect of any rental of a sound recording or film before 1st October 2013, or

- (b) in respect of any rental after that date of a sound recording or film made in pursuance of an agreement entered into before commencement, unless the author (or a successor in title of his) has before that date notified the person by whom the remuneration would be payable that he intends to exercise that right.

*Savings for existing stocks*

11. Any new right in relation to a copyright work does not apply to a copy of the work acquired by a person before commencement for the purpose of renting it to the public.

*Circumvention of copy-protection etc.*

12. (1) Section 163 in the 1991 provisions (devices designed to circumvent copy-protection) continues to apply to acts done in relation to computer programs or other works prior to commencement.
- (2) Section 163 (as substituted by Schedule 1) and sections 163ZA and 163ZD apply to acts done in relation to computer programs or other works on or after commencement.

*Offences*

13. Nothing in Schedule 1 relating to offences applies to any act committed before commencement.

## PART 2

### DURATION OF COPYRIGHT

*Interpretation*

14. (1) Subject to sub-paragraph (2), in this Part —
- (a) “**extended copyright**” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 1991 provisions;
- (b) “**the duration provisions**” means the provisions of the Act relating to the duration of copyright, as amended by Schedule 1.
- (2) This Part is subject to Part 3 in relation to copyright in sound recordings.

*Films not protected as such*

15. In relation to a film in which copyright does not or did not subsist as such but which is or was protected —
- (a) as an original dramatic work, or
- (b) by virtue of the protection of the photographs forming part of the film,

references in the duration provisions, and in this Schedule, to copyright in a film are to any copyright in the film as an original dramatic work or, as the case may be, in photographs forming part of the film.

*Duration of copyright: general saving*

16. (1) Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 1991 provisions if that date is later than the date on which copyright would expire under the duration provisions.
- (2) Where paragraph (1) has effect, section 57 of the Act (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) applies as it applied immediately before commencement (that, without the amendments made by Schedule 1).

*Duration provisions: application*

17. (1) The duration provisions apply—
- (a) to copyright works made after commencement; and
  - (b) to existing works which first qualify for copyright protection after commencement.
  - (c) to existing copyright works, subject to paragraph 16.
- (2) The duration provision do not operate to revive any copyright which had expired before commencement.

*Ownership of extended copyright*

18. (1) The person who is the owner of the copyright in a work immediately before commencement is as from commencement the owner of any extended copyright in the work, subject as follows.
- (2) If that person is entitled to copyright for a period less than the whole of the copyright period under the 1991 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period.

*Prospective ownership of extended copyright*

19. (1) Where —
- (a) by an agreement made before commencement in relation to extended copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended copyright (wholly or partially) to another person, and
  - (b) on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him,

the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.

- (2) A licence granted by a prospective owner of extended copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in the Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.
- (3) In sub-paragraph (2) “prospective owner” includes a person who is prospectively entitled to extended copyright by virtue of such an agreement as is mentioned in paragraph (1).

*Extended copyright: existing licences, agreement, &c.*

20. (1) Any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—
  - (a) subsists immediately before commencement in relation to an existing copyright work, and
  - (b) is not to expire before the end of the copyright period under the 1991 provisions,shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.
- (2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Tribunal which—
  - (a) subsists immediately before commencement in relation to an existing copyright work, and
  - (b) is not to expire before the end of the copyright period under the 1991 provisions,shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

*Film sound tracks: application of duration provisions*

21. (1) The duration provisions relating to the treatment of film sound tracks apply to existing sound tracks as from commencement.
- (2) The owner of any copyright in a film has as from commencement corresponding rights as copyright owner in any existing sound track treated as part of the film; but without prejudice to any rights of the owner of the copyright in the sound track as a sound recording.
- (3) Anything done before commencement under or in relation to the copyright in the sound recording continues to have effect and shall have effect, so far as concerns the sound track, in relation to the film as in relation to the sound recording.

- (4) It is not an infringement of the copyright in the film (or of any moral right in the film) to do anything after commencement in pursuance of arrangements for the exploitation of the sound recording made before commencement.

*Construction of references to EEA states*

22. (1) For the purpose of the duration provisions relating to the term of copyright protection applicable to a work of which the country of origin is not an EEA state and of which the author is not a national of an EEA state—
- (a) a work first published before commencement shall be treated as published in an EEA state if it was on that date regarded under the law of the Island, the United Kingdom or another EEA state as having been published in that state;
- (b) an unpublished film made before commencement shall be treated as originating in an EEA state if it was on that date regarded under the law of the Island, the United Kingdom or another EEA state as a film whose maker had his headquarters in, or was domiciled or resident in, that state; and
- (c) the author of a work made before commencement shall be treated as an EEA national if he was on that date regarded under the law of the Island, the United Kingdom or another EEA state as a national of that state.
- (2) The references above to the law of another EEA state are to the law of that state having effect for the purposes of rights corresponding to those provided for in the Act.
- (3) In this paragraph “another EEA state” means an EEA state other than the United Kingdom.
23. Any question arising, in relation to photographs which are existing works, as to who is to be regarded as the author for the purposes of paragraphs 16 and 17 is to be determined in accordance with section 9 as in force on commencement (and not, by virtue of paragraph 10 of Schedule 1 to the Act, in accordance with the law in force at the time when the work was made).

## PART 3

### DURATION OF COPYRIGHT IN SOUND RECORDINGS

*Interpretation*

24. In this Part —
- “**extended copyright**” means any copyright in sound recordings which subsists by virtue of section 13 of the Act (as substituted by Schedule 1) after the date on which it would have expired under the 1991 provisions;

“prospective owner” includes a person who is prospectively entitled to extended copyright in a sound recording by virtue of such an agreement as is mentioned in paragraph 26.

*Ownership of extended copyright in sound recordings*

25. The person who is the owner of the copyright in a sound recording immediately before commencement is as from commencement the owner of any extended copyright in that sound recording.

*Prospective ownership of extended copyright in sound recordings*

26. (1) Where by an agreement made before commencement in relation to extended copyright in a sound recording, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended copyright (wholly or partially) to another person, then, if on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.
- (2) A licence granted by a prospective owner of extended copyright in a sound recording is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in the Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

*Extended copyright in sound recordings: existing licences, agreements, etc.*

27. (1) Any copyright licence or any term or condition of an agreement relating to the exploitation of a sound recording which —
- (a) subsists immediately before commencement in relation to an existing sound recording, and
- (b) is not to expire before the end of the copyright period under the 1991 provisions,
- shall continue to have effect during the period of any extended copyright in that sound recording, subject to any agreement to the contrary.
- (2) Any copyright licence, or term or condition relating to the exploitation of a sound recording, imposed by order of the Tribunal which —
- (a) subsists immediately before commencement in relation to an existing sound recording, and
- (b) is not to expire before the end of the copyright period under the 1991 provisions,
- shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.





*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations amend the Copyright Act 1991 to conform with EU Directives relating to intellectual property. These Directives were applied to the Isle of Man with modifications by the European Union (Intellectual Property) Order 2013 (SD 0073/13).