

Statutory Document No. 0075/13

*European Communities (Isle of Man) Act 1973*

PERFORMERS' PROTECTION (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 Performers' Protection (Amendment) Regulations 2013.

2 Commencement

These Regulations come into operation on 1 April 2013.

3 Amendment of Performers' Protection Act 1996

Subject to regulation 4, the Performers' Protection Act 1996 ("the Act") is amended in accordance with Schedule 1.

4 Transitional provisions

The transitional provisions in Schedule 2 have effect.

MADE 28TH FEBRUARY 2013

W GREENHOW
Chief Secretary

SCHEDULE 1

[regulation 3]

AMENDMENT OF THE PERFORMERS' PROTECTION ACT 1996

Extension of performers' rights

1. For section 3 substitute—

3. Consent required for recording, &c. of live performance

- (1) A performer's rights are infringed by a person who, without his consent—
 - (a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
 - (b) broadcasts live the whole or any substantial part of a qualifying performance,
 - (c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of the live performance.
- (2) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given. **22**.

2. After section 3 insert—

3A Consent required for copying of recording

- (1) A performer's rights are infringed by a person who, without his consent, makes a copy of a recording of the whole or any substantial part of a qualifying performance.
- (2) In subsection (1), making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.
- (3) It is immaterial whether the copy is made directly or indirectly.
- (4) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Act as “**reproduction right**”.

3B Consent required for issue of copies to public

- (1) A performer's rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.

- (2) References in this Act to the issue to the public of copies of a recording 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 performer, 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 recording do not include—
- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 3C), or
 - (b) any subsequent importation of such copies into the Island, the United Kingdom or another 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 recording of a performance include the issue of the original recording of the live performance.
- (5) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Act as “**distribution right**”.

3C. Consent required for rental of copies to public

- (1) A performer’s rights are infringed by a person who, without his consent, rents to the public copies of a recording of the whole or any substantial part of a qualifying performance.
- (2) In this Act, subject to the following provisions of this section, “**rental**” means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage.
- (3) The expression “rental” does not include—
- (a) making available for the purpose of public performance, playing or showing in public or communication to the public;
 - (b) making available for the purpose of exhibition in public; or
 - (c) making available for on-the-spot reference use.
- (4) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment,

there is no direct or indirect economic or commercial advantage for the purposes of this section.

- (5) References in this Act to the rental of copies of a recording of a performance include the rental of the original recording of the live performance.
- (6) In this Act “**rental right**” means the right of a performer under this section to authorise or prohibit the rental of copies to the public. **22**.

Making available right

3. After section 3C insert —

3D Consent required for making available to the public

- (1) A performer’s rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.
- (2) The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this Act as “**making available right**”.

3E Right to equitable remuneration for exploitation of sound recording

- (1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance —
 - (a) is played in public, or
 - (b) is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 3D(1),
 the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.
- (2) The right to equitable remuneration under this section may not be assigned by the performer 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) 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 the following provisions.
- (4) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Tribunal to determine the amount payable.
- (5) A person to or by whom equitable remuneration is payable 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.
- (6) 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 performer to the sound recording.
- (7) An agreement is of no effect in so far as it purports—
- (a) to exclude or restrict the right to equitable remuneration under this section, or
- (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under this section. **22**.

Recording of performance

4. In section 7(1), omit the words from “otherwise” onwards.

Performers' rights: power of Copyright Tribunal to give consent

5. (1) For section 11(1) substitute—
- 13**(1) The Tribunal may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry. **22**.
- (2) In section 11(2), for “the performer” substitute **13** the person entitled to the reproduction right **22**.

- (3) Omit section 11(4).
- (4) In section 11(6), for “the performer”, in the first place, substitute **“the person entitled to the reproduction right”**, and in the second place, substitute **“that person”**.

Duration of rights in performances

6. (1) For the heading before section 12 substitute—

“Duration of rights”.

- (2) For section 12 substitute—

12. Duration of rights

- (1) The following provisions have effect with respect to the duration of the rights conferred by this Act.
- (2) The rights conferred by this Act in relation to a performance expire—
 - (a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place, or
 - (b) if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released,
 subject as follows.
- (3) For the purposes of subsection (2) a recording is “released” when it is first published, played or shown in public or communicated to the public; but in determining whether a recording has been released no account shall be taken of any unauthorised act.
- (4) Where a performer is not a national of an EEA state, the duration of the rights conferred by this Act in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).
- (5) If or to the extent that the application of subsection (4) would be at variance with an international obligation which extended to the Isle of Man before 1 April 2013, the duration of the rights conferred by this Act shall be as specified in subsections (2) and (3). **”**

Performers' property rights

7. After section 12 insert—

12A Performers' property rights

- (1) The following rights conferred by this Act on a performer—

reproduction right (section 3A),
distribution right (section 3B),
rental right (section 3C),
making available right (section 3D),
are property rights (“**performer’s property rights**”).

- (2) References in this Act to the consent of the performer shall be construed in relation to a performer’s property rights as references to the consent of the rights owner.
- (3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer’s property rights in relation to a performance, the rights owner for any purpose of this Act is the person who is entitled to the aspect of those rights relevant for that purpose.
- (4) Where a performer’s property rights (or any aspect of them) are owned by more than one person jointly, references in this Act to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

12B Assignment and licences

- (1) A performer’s property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.
- (2) An assignment or other transmission of a performer’s property rights may be partial, that is, limited so as to apply –
 - (a) to one or more, but not all, of the things requiring the consent of the rights owner;
 - (b) to part, but not the whole, of the period for which the rights are to subsist.
- (3) An assignment of a performer’s property rights is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by the owner of a performer’s property rights is binding on every successor in title to his interest in the rights, 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 this Act to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

12C Prospective ownership of a performer's property rights

- (1) This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's property rights (wholly or partially) to another person.
- (2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.
- (3) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interest (or prospective interest) in the rights, 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.

References in this Act to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

- (4) In subsection (3) "prospective owner" in relation to a performer's property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).

12D Exclusive licences

- (1) In this Act an "exclusive licence" means a licence in writing signed by or on behalf of the owner of a performer's property rights authorising the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.
- (2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

12E Performer's property right to pass under will with unpublished original recording

Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance which was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including any performer's rights in relation to the recording to which the testator was entitled immediately before his death.

12F Presumption of transfer of rental right in case of film production agreement

- (1) Where an agreement concerning film production is concluded between a performer and a film producer, the performer 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 from the inclusion of a recording of his performance in the film.
- (2) Where this section applies, the absence of signature by or on behalf of the performer does not exclude the operation of section 12C (effect of purported assignment of future rights).
- (3) The reference in subsection (1) to an agreement concluded between a performer and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.
- (4) Section 12G (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.

12G Right to equitable remuneration where rental right transferred

- (1) Where a performer 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 reference above to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries.
- (2) The right to equitable remuneration under this section may not be assigned by the performer 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 12H.

- (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) 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 on behalf of more than one performer.

12H Equitable remuneration: reference of amount to Tribunal

- (1) In default of agreement as to the amount payable by way of equitable remuneration under section 12G, 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 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 performer 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.

12I Infringement actionable by rights owner

- (1) An infringement of a performer’s property rights is actionable by the rights owner.
- (2) In an action for infringement of a performer’s property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

- (3) This section has effect subject to the following provisions of this Act.

12J Provisions as to damages in infringement action

- (1) Where in an action for infringement of a performer's property rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the recording to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.
- (2) The court may in an action for infringement of a performer's property rights having regard to all the circumstances, and in particular to—
- (a) the flagrancy of the infringement, and
 - (b) any benefit accruing to the defendant by reason of the infringement, award such additional damages as the justice of the case may require.

12K Rights and remedies for exclusive licensee

- (1) An exclusive licensee has, except against the owner of a performer's property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.
- (2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of this Act to the rights owner shall be construed accordingly.
- (3) In an action brought by an 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 rights owner.

12L Exercise of concurrent rights

- (1) Where an action for infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.
- (2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

- (3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.
- (4) Where an action for infringement of a performer's property rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—
- (a) the court shall in assessing damages take into account—
- (i) the terms of the licence, and
- (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them; and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.
- (5) The owner of a performer's property rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 16 or exercising the right conferred by section 17); and the court may on the application of the licensee make such order under section 16 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right conferred by section 17, as it thinks fit having regard to the terms of the licence. ~~22~~.
8. For section 13 substitute—

13 Performers' non-property rights

- (1) The rights conferred on a performer by—
- section 3 (consent required for recording, &c. of live performance),
- section 4 (infringement of performer's rights by use of recording made without consent), and
- section 5 (infringement of performer's rights importing, possessing or dealing with illicit recording),
- are not assignable or transmissible, except to the following extent.
- They are referred to in this Act as "**performer's non-property rights**".

- (2) On the death of a person entitled to any such right—
 - (a) the right passes to such person as he may by testamentary disposition specifically direct, and
 - (b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.
- (3) References in this Act to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.
- (4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.
- (5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

13A Transmissibility of rights of person having recording rights

- (1) The rights conferred by this Act on a person having recording rights are not assignable or transmissible.
 - (2) This does not affect section 6(2)(b) or (3)(b), so far as those provisions confer rights under this Act on a person to whom the benefit of a contract or licence is assigned. **22**.
9. (1) In section 14(1), after “Consent for the purposes of this Act” insert **23** by a person having a performer's non-property rights, or by a person having recording rights, **22**.
- (2) In section 14(3), for “a right conferred by this Act” substitute **23** a performer's non-property right **22**.
10. (1) In the heading before section 15, for “Remedies” substitute **23** Action **22**.
- (2) In section 15 —
- (a) at the beginning insert **23**(1) **22**;
 - (b) for “any of the rights conferred by this Act” substitute —
 - 23**(a) a performer's non-property rights, or
 - (b) any right conferred by this Act on a person having recording rights, **22**;
 - (c) at the end insert —
- 23**(2) Where in an action for infringement of any right conferred by this Act 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.

- (3) 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**.
11. Before section 16 insert the heading —
- 23** *Delivery up or seizure of illicit recordings* **22**.
12. In section 18(5) —
- (a) omit the words “or cable programme”, and the word “or” immediately preceding “paragraph 16(3)”;
- (b) at the appropriate place insert —
- 23** paragraph 17A(2) (recording for purposes of time-shifting), or paragraph 17B(2) (photographs of broadcasts), **22**.
13. After section 18 insert —
- 23** **18A Presumptions relevant to recordings of performances**
- (1) In proceedings brought by virtue of this Act with respect to the rights in a performance, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.
- (2) Subsection (1) does not apply to proceedings for an offence under section 19 (criminal liability for making etc. illicit recordings); but without prejudice to its application in proceedings for an order under section 21 (order for delivery up in criminal proceedings). **22**.

Criminal offences

14. (1) After section 19(1) insert—
- (1A) A person who infringes a performer's making available right—
- (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 making available right,
- commits an offence if he knows or has reason to believe that, by doing so, he is infringing the making available right in the recording. **22**.
- (2) After section 19(5) insert—
- (5A) A person guilty of an offence under subsection (1A) 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 or custody for a term not exceeding 2 years or a fine, or both. **22**.

Search warrants

15. (1) In section 22(1)(a), for “section 19(1)(a), (b) or (d)(iii)” substitute **23**section 19(1) or (1A) **22**, and after “importing” insert **23**, possessing, selling etc. **22**.
- (2) After section 22(3) insert —
- 23**(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 19(1) or (1A) has been or is about to be committed. **22**.

Licensing of performers' property rights

16. After section 26 insert—
- 23**26A **Licensing of performers' property rights**
- The provisions of Schedule 1A have effect with respect to the licensing of performers' property rights. **22**.

Performers' rights: jurisdiction of Tribunal

17. After section 26A insert—

44 *Jurisdiction of Copyright Tribunal*

26B Jurisdiction of Tribunal

- (1) The Tribunal has jurisdiction under this Act to hear and determine proceedings under –
 - (a) section 3D;
 - (b) section 11;
 - (c) section 12H; and
 - (d) paragraphs 3, 4, 5, 6, 7, 10, 11 and 12 of Schedule 1A.
- (2) The provisions of Part VIII of the Copyright Act 1991 apply in relation to the Tribunal when exercising any jurisdiction under this Act.
- (3) Provision shall be made by rules under section 145 of that Act prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 1A by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent. **22**.

Circumvention of protection measures

18. After section 30 insert –

44 *Circumvention of protection measures etc.*

30A Circumvention of protection measures and rights management information

- (1) The following provisions of the Copyright Act 1991 apply, with any necessary modifications, to rights in performances as they apply to copyright –
 - (a) subsections (1) to (4) and (5)(b) of section 163ZA (circumvention of technological measures);
 - (b) subsections (1) to (5), (6)(b) and (7) of section 163ZD (rights and remedies in respect of devices and services) of that Act;
 - (c) section 163ZE (remedy where effective technological measures prevent permitted acts).
 - (d) subsections (1) to (5) and (6)(b) of section 163ZG (rights management information); and
 - (e) any other provision as it has effect for the purposes of the subsections mentioned in paragraphs (a), (b) and (d).

- (2) For the purpose of this section the expression “permitted act” in section 163ZE refers to an act that may be done by virtue of any of the following provisions of Schedule 1 —
- paragraph 4 (things done for purposes of instruction or examination)
 - paragraph 6 (recording of broadcasts by educational establishments)
 - paragraph 7 (copy of work required to be made as condition of export)
 - paragraph 8 (Tynwald and judicial proceedings)
 - paragraph 9 (Commissions and statutory inquiries)
 - paragraph 10 (public records)
 - paragraph 11 (acts done under statutory authority)
 - paragraph 14 (recordings of folksongs)
 - paragraph 16 (incidental recording for purposes of broadcast)
 - paragraph 17 (recordings for purposes of supervision and control of broadcasts)
 - paragraph 17A (recording for the purposes of time-shifting)
 - paragraph 17B (photographs of broadcasts)
 - paragraph 20 (provision of sub-titled copies of broadcast)
 - paragraph 21 (recording of broadcast for archival purposes). **22**.

Supplemental

19. After section 30A (and the heading “Supplemental”) insert —

22 30B Requirement of signature: application in relation to body corporate

The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—

- section 12B(3) (assignment of performer’s property rights);
- section 12C(1) (assignment of future performer’s property rights);
- section 12D(1) (grant of exclusive licence). **22**.

20. (1) In section 32(1) —
- (a) omit the entries for “cable programme,” and “cable programme service”;
 - (b) at the appropriate place insert —

- the EEA,
EEA state, **22**.
- (2) In section 32(2), for the words from the beginning to “apply” substitute—
- The provisions of—
- (a) section 5A(2) and (3) (supplementary provisions relating to films), and
- (b) section 6(3) and (4) and section 19(4) (supplementary provisions relating to broadcasting),
- of the Copyright Act 1991 apply **22**.
21. In section 33 —
- (a) omit the entry for “cable programme, cable programme service (and related expressions)”;
- (b) in the entry relating to the expression “film” for “section 5” substitute **22** section 5A **22**;
- (c) at the appropriate places insert —
- | | |
|---|---|
| 22 consent of performer (in relation to performer’s property rights) | section 12A(2) 22 |
| 22 distribution right | section 3B(5) 22 |
| 22 the EEA and EEA state | section 32(1) (and Copyright Act 1991 section 169A) 22 |
| 22 performer’s non-property rights | section 13(1) 22 |
| 22 performer’s property rights | section 13(1) 22 |
| 22 rental right | section 3C(6) 22 |
| 22 reproduction right | section 3A(4) 22 |
| 22 rights owner (in relation to performer’s property rights) | section 12A(3) and (4) 22 . |

Making of temporary copies

22. After paragraph 1 of Schedule 1 insert —

22 *Making of temporary copies*

- 1A. The rights conferred by this Act are not infringed by the making of a temporary copy of a recording of a performance 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 recording in a network between third parties by an intermediary; or
- (b) a lawful use of the recording;
- and which has no independent economic significance. **22**.

Criticism, review and news reporting

23. For paragraph 2(1) of Schedule 1 substitute —

- 23**2. (1) Fair dealing with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by this Act provided that the performance or recording has been made available to the public.
- (1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by this Act. **22**.

Things done for the purposes of instruction or examination

24. In paragraph 4 of Schedule 1 —

- (a) in sub-paragraph (1) after “receiving instruction” insert **23** and the instruction is for a non-commercial purpose **22**;
- (b) in sub-paragraph (3) for the words from “For this purpose” onwards substitute —

- 23**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 sub-paragraph (2)(b), is not an infringement of the rights conferred by this Act. **22**.

Recordings by educational establishments of broadcasts

25. In paragraph 6 of Schedule 1 —

- (a) in the heading, omit “and cable programmes”;
- (b) in sub-paragraph (1) —
- (i) omit “or cable programme”;
- (ii) after “included in it” insert **23**, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial **22**;
- (c) after sub-paragraph (1) insert—

- 23**(1A) The rights conferred by this Act are not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of sub-paragraph (1) not an infringement of such rights, 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. **22**;

- (d) in sub-paragraph (2) for the words from “or offered” onwards substitute **63**, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises. **62**.

Use of recordings of spoken works

26. In paragraph 13 of Schedule 1 —
- (a) in sub-paragraph (1)(b), for “broadcasting or including in a cable programme” substitute **64** communicating to the public **62**;
- (b) in sub-paragraph (2)(a), omit “or cable programme”.

Playing of sound recordings for purposes of club, society etc.

27. In paragraph 15(2) of Schedule 1, omit the word “and” immediately preceding sub-paragraph (b) and for sub-paragraph (b) substitute—

- 64**(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. **62**.

Incidental recording for purposes of broadcast

28. In paragraph 16 of Schedule 1 —
- (a) in the heading, omit “or cable programme”;
- (b) in sub-paragraph (1), omit the words from “, or include” to “service,” and “or cable programme”;
- (c) in sub-paragraph (2)(b), omit “or including it in a cable programme service”.

Recordings and photographs of broadcasts

29. After paragraph 17 of Schedule 1 insert —

65 *Recording for purposes of time-shifting*

- 17A. (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient

time does not infringe any right conferred by this Act in relation to a performance or recording included in the broadcast.

- (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 right conferred by this Act in relation to a performance or recording included in the broadcast, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.
- (3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—
 - (a) it shall be treated as an illicit recording for the purposes of that dealing; and
 - (b) if that dealing infringes any right conferred by this Act, it shall be treated as an illicit recording for all subsequent purposes.
- (4) In sub-paragraph (3), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (5) Expressions used in this paragraph have the same meanings as in section 70 of the Copyright Act 1991.

Photographs of broadcasts

- 17B.—(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 right conferred by this Act in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—
 - (a) it shall be treated as an illicit recording for the purposes of that dealing; and
 - (b) if that dealing infringes any right conferred by this Act, it shall be treated as an illicit recording for all subsequent purposes.

- (3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meanings as in section 71 of the Copyright Act 1991. **22**.

Public showing or playing of broadcast

30. In paragraph 18 of Schedule 1 —

- (a) in the heading, omit “or cable programme”;
- (b) in sub-paragraph (1) omit “or cable programme” (in each place) and “or programme”;
- (c) in sub-paragraph (1)(b) after “sound recording” insert **66**(except so far as it is an excepted sound recording) **22**;
- (d) after sub-paragraph (1) insert —

66(1A) 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 right conferred by this Act in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, 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**;

- (e) in sub-paragraphs (2), omit “or programme”;
- (f) in sub-paragraph (3)(b), omit “or programmes”;
- (g) in sub-paragraph (4), omit the words from “or inclusion” to “programme service” and “or programme”.

Reception and re-transmission of broadcasts

31. In paragraph 19 of Schedule 1 —

- (a) in the heading, for “broadcast in cable programme service” substitute **66**wireless broadcast by cable **22**;
- (b) in sub-paragraph (1), before “broadcast” insert **66**wireless **22**, and for the words from “, by reception” onwards substitute **66**received and immediately re-transmitted by cable **22**;
- (c) in sub-paragraph (2) —

- (i) for “the cable programme service is provided” substitute “it is re-transmitted by cable”; and
- (ii) for “as a programme in a cable programme service” substitute “by cable”.

Sub-titling of copies of broadcasts

32. In paragraph 20 of Schedule 1 —
- (a) in the heading, omit “or cable programme”;
 - (b) in sub-paragraph (1) —
 - (i) for “television broadcasts or cable programmes” substitute “broadcasts and copies of such recordings, and issue copies to the public”;
 - (ii) omit “or cable programme”.

Recording of broadcast for archival purposes

33. In paragraph 21 of Schedule 1 —
- (a) in the heading, omit “or cable programme”;
 - (b) in sub-paragraph (1), omit “or cable programme” (in each place).
34. After Schedule 1 insert —

SCHEDULE 1A

[sections 26A and 26B]

LICENSING OF PERFORMERS' PROPERTY RIGHTS

Licensing schemes and licensing bodies

1. (1) In this Act a “**licensing scheme**” means a scheme setting out—
- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant performers' property right licences, and
 - (b) the terms on which licences would be granted in those classes of case;
- and for this purpose a “**scheme**” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In this Act a “**licensing body**” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a performer’s property rights or as agent for him, of performers' property right licences, and whose objects include the granting of licences covering the performances of more than one performer.

- (3) In this paragraph “performers' property right licences” means licences to do, or authorise the doing of, any of the things for which consent is required under section 3A, 3B, 3C or 3D.
- (4) References in this Act to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only—
 - (a) performances recorded in a single recording,
 - (b) performances recorded in more than one recording where—
 - (i) the performers giving the performances are the same, or
 - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies. For purpose a group of companies means a holding company and its subsidiaries within the meaning of section 1 of the Companies Act 1974.

References and applications with respect to licensing schemes

- 2. Paragraphs 3 to 8 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies in relation to a performer's property rights which cover the performances of more than one performer, so far as they relate to licences for—
 - (a) copying a recording of the whole or any substantial part of a qualifying performance,
 - (b) renting copies of a recording to the public, or
 - (c) making such a recording available to the public in the way mentioned in section 3D(1),
 and in those paragraphs “licensing scheme” means a licensing scheme of any of those descriptions.

Reference of proposed licensing scheme to tribunal

- 3. (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it

- relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.
- Reference of licensing scheme to tribunal*
4. (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and—
- (a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or
- (b) an organisation claiming to be representative of such persons,
- that person or organisation may refer the scheme to the Tribunal in so far as it relates to cases of that description.
- (2) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.
- (3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.
- Further reference of scheme to tribunal*
5. (1) Where the Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, made an order with respect to the scheme, then, while the order remains in force—
- (a) the operator of the scheme,
- (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
- (c) an organisation claiming to be representative of such persons,
- may refer the scheme again to the Tribunal so far as it relates to cases of that description.
- (2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—
- (a) within 12 months from the date of the order on the previous reference, or
- (b) if the order has made so as to be in force for 15 months or less, until the last 3 months before the expiry of the order.

- (3) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for grant of licence in connection with licensing scheme

6. (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Tribunal.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—
 - (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
 - (b) proposes terms for a licence which are unreasonable,may apply to the Tribunal.
- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of sub-paragraph (2) if—
 - (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or
 - (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to entitlement to licence

7. (1) Where the Tribunal has made an order under paragraph 6 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
- (a) within 12 months from the date of the order, or of the decision on a previous application under this paragraph, or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last 3 months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Effect of order of tribunal as to licensing scheme

8. (1) A licensing scheme which has been confirmed or varied by the Tribunal under paragraph 3, 4 or 5 shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.
- (2) While the order is in force a person who in a case of a class to which the order applies—
- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
- (b) complies with the other terms applicable to such a licence under the scheme,
- shall be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question in accordance with the scheme.
- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.
- If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in sub-paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where sub-paragraph (4) applies.

- (4) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall, if he—

- (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

- 9. Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to a performer's property rights which cover the performance of more than one performer granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise—

- (a) copying a recording of the whole or any substantial part of a qualifying performance,
- (b) renting copies of a recording to the public, or
- (c) making such a recording available to the public in the way mentioned in section 3D(1),

and references in those paragraphs to a licence shall be construed accordingly.

Reference to Tribunal of proposed licence

- 10. (1) The terms on which a licensing body proposes to grant a licence may be referred to the Tribunal by the prospective licensee.

- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either

confirming or varying the terms as it may determine to be reasonable in the circumstances.

- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Reference to Tribunal of expiring licence

11. (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

- (2) Such an application may not be made until the last 3 months before the licence is due to expire.

- (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.

- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

- (5) An order of the Tribunal under this paragraph may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to licence

12. (1) Where the Tribunal has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

- (2) An application shall not be made, except with the special leave of the Tribunal—

- (a) within 12 months from the date of the order or of the decision on a previous application under this paragraph, or
(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last 3 months before the expiry date.

- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

Effect of order of Tribunal as to licence

13. (1) Where the Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he—
- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
 - (b) complies with the other terms specified in the order,
- be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.
- (2) The benefit of the order may be assigned—
- (a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and
 - (b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.
- (3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.
- If such a direction is made—
- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
 - (b) the reference in sub-paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

General considerations: unreasonable discrimination

14. (1) In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Tribunal shall have regard to—
- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
 - (b) the terms of those schemes or licences,
- and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or

application relates and licensees under other schemes operated by, or other licences granted by, the same person.

- (2) This does not affect the Tribunal's general obligation in any case to have regard to all relevant circumstances. **22**.

SCHEDULE 2

[regulation 4]

TRANSITIONAL PROVISIONS*Interpretation*

1. (1) In this Schedule —
 - (a) “the 1996 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 Performers' Protection Act 1996;
 - (c) “commencement”, without more, means the date on which Schedule 1 comes into operation;
 - (d) “existing”, in relation to performances, means given before commencement;
 - (e) “existing protected performance” means a performance in relation to which rights under the Act subsisted immediately before commencement.
 - (f) “extended performance rights” means rights under the Act which subsist by virtue of the new provisions after the date on which they would have expired under the 1996 provisions;
 - (g) “new right” means a right conferred by Schedule 1;
 - (h) “the new provisions” means the provisions of the Act as amended by Schedule 1;
 - (i) “performers' rights” means the rights given by section 1(1)(a) of the Act;
 - (j) “recording rights” means the rights given by section 1(1)(b) of the Act.
- (2) Expressions used in this Schedule which are defined for the purposes of the Act have the same meanings as in the Act.

General rules

2. (1) Subject to paragraph 3, Schedule 1 applies to performances given before or after commencement.
- (2) No act done before commencement shall be regarded as an infringement of any new right.

Saving for certain existing agreements

3. (1) Nothing in Schedule 1 affects an 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.

Permitted acts

4. The provisions of Schedule 1 in the 1996 provisions shall continue to apply to anything done after commencement in completion of an act begun before commencement which was permitted by those provisions.

Exercise of new rights

5. (1) Any new right is exercisable as from commencement by the performer or (if he has died) by the person who immediately before commencement was entitled by virtue of section 13(2) to exercise the rights conferred on the performer by the 1996 provisions in relation to that performance.
- (2) Any damages received by a person's personal representatives by virtue of the right conferred by sub-paragraph (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

Effect of pre-commencement authorisation of copying

6. Where before commencement the owner or prospective owner of performers' rights in a performance has authorised a person to make a copy of a recording of the performance, any new right in relation to that copy shall vest on commencement in the person so authorised, subject to any agreement to the contrary.

New rights: effect of pre-commencement film production agreement

7. (1) Section 12F applies in relation to an agreement concluded before commencement.
- (2) Section 12G has effect accordingly, but subject to paragraph 8.

Right to equitable remuneration applicable to rental after commencement

8. No right to equitable remuneration under section 12G 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 performer (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.

Duration of rights in performances: general saving

9. Any rights under the Act in an existing protected performance shall continue to subsist until the date on which they would have expired under the 1996 provisions if that date is later than the date on which the rights would expire under the new provisions.

Duration of rights in performances: application of new provisions

10. (1) The new provisions relating to the duration of rights under the Act apply—
- (a) to performances taking place after commencement;
 - (b) to existing performances which first qualify for protection under the Act after commencement;
 - (c) to existing protected performances, subject to paragraph 9.
- (2) The new provisions relating to the duration of rights under the Act do not apply to existing performances in which rights under the Act expired before commencement.

Entitlement to extended performance rights

11. (1) Any extended performance rights are exercisable as from commencement by the person who was entitled to exercise those rights immediately before commencement, that is—
- (a) in the case of performers' rights, the performer or (if he or she has died) the person entitled by virtue of section 13(2) of the Act to exercise those rights;
 - (b) in the case of recording rights, the person who was within the meaning of section 6 of the Act the person having those rights.
- (2) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by sub-paragraph (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him or her immediately before death.

Extended performance rights: existing consents, agreement, &c.

12. Any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—
- (a) subsists immediately before commencement, and
 - (b) is not to expire before the end of the period for which rights under the Act subsist in relation to that performance,
- shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

Construction of references to EEA states

13. (1) For the purposes of the new provisions relating to the term of protection applicable to a performance where the performer is not a national of an EEA state, the performer of a performance given 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 reference in sub-paragraph (1) to the law of another EEA state is 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.

Sanctions and remedies

14. (1) Sections 163ZA and 163ZD of the Copyright Act 1991 (as applied by section 30A of the Act) shall apply to acts done in relation to performances on or after commencement.
- (2) Section 19(1A) of the Act, and section 163ZB(1) and (2) of the Copyright Act 1991 (as applied by section 30A of the Act), do not have effect in relation to any act committed before commencement.

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

These Regulations amend the Performers' Protection Act 1996, which confers rights in relation to performances and recordings of performances, to conform with EU Directives relating to intellectual property which were applied to the Isle of Man with modifications by the European Union (Intellectual Property) Order 2013 (SD 0073/13).