

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Miscellaneous and General

Copyright and rights in performances

Section 76: Power to reduce duration of copyright in transitional cases

520. [Section 76](#) amends section 170 of the CDPA 1988 (transitional provisions and savings) and gives the Secretary of State a power to reduce the duration of copyright in certain unpublished works which are currently subject to the transitional provisions (set out in Schedule 1 of the CDPA 1988). The section allows for regulations to provide for different provisions for different types of work and of different ages. This would mean that recent works, for example, could be treated differently to centuries' old works.
521. Under this section, no works will receive a shorter term of copyright protection than set out in the EU Term Directive. For example, for literary works by a known author, the standard term is life of the author plus 70 years. Where an author is unknown, the standard term is 70 years from the year in which the work was created or first made available.
522. Currently, some works caught by the existing transitional provisions enjoy copyright protection until 2039 if this date falls after the standard terms set out in the EU Term Directive [2006/116/EC](#). This means that works such as centuries' old unpublished manuscripts in archives, libraries and museums are still in copyright. Also, recent unpublished works that were in existence when the CDPA came into force such as unpublished minutes of meetings from the 20th century, where the author died before 1st January 1969, remain in copyright until 2039. These unpublished works enjoy a period of copyright protection longer than the standard terms set out in the EU Term Directive.
523. Many of these unpublished works are orphan works because it is not possible to contact the rights holder, who may be a long lost historical figure or a beneficiary who cannot be located, to ask permission to use them. By reducing the term of copyright protection to the standard terms, many of these works will fall into the public domain and could be made accessible to the public by archiving institutions.
524. Unpublished films and unpublished photographs are excluded from the section because of the possibility of their being exploited commercially without having been published.