
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement all of those provisions of Council Directive No. 93/98/EEC (O.J. No. L 290, 24.11.93, p. 9) ("the Directive") which harmonise the term of protection of copyright and certain related rights. The Regulations come into force on 1st January 1996.

The Copyright, Designs and Patents Act 1988 ("the Act") already grants some of the terms of protection required by the Directive. These regulations amend and extend the Act insofar as its provisions do not conform to or comply with the requirements of the Directive. They also implement in respect of that Act, insofar as required by, or consequential upon the modifications made in implementation of the Directive, the obligation imposed by the European Economic Area Act 1993 in accordance with the United Kingdom's obligations under the European Economic Area Agreement, to substitute for any reference to a Member State of the European Community, a reference to an EEA State.

The provisions of the Directive harmonising the duration of copyright increase the existing period of copyright in literary, dramatic, musical and artistic works in the United Kingdom from the life of the author plus 50 years, to the life the author plus 70 years. The manner in which the duration of copyright in films is calculated is modified by the Directive so as to be similar in length to that of literary, dramatic, musical and artistic works although based on the life not of the author of a film, but of certain persons connected with the film. The starting point for calculation of the present 50 year period of protection of rights in performances is also modified by the Directive with the result that the overall duration of those rights will, in some cases, increase. The Directive also requires reciprocal duration of copyright and performer's rights in the case of works and performances connected with countries not members of the EEA.

Transitional provisions have the following effect where the period of protection is increased:—in relation to duration of copyright, in the case of works in which copyright subsists on 31st December 1995, the duration of copyright is extended from 1st January 1996; in the case of works in which copyright has expired in the United Kingdom before 1st July 1995, but which are protected on that date under the copyright legislation of any other State in the EEA, copyright will revive on 1st January 1996 and will then expire on a date 70 years after the author's death;—in relation to duration of rights in performances, to provide for both extending and reviving rights in performances where this occurs as a result of the application of the modified starting point for calculating the term of protection of existing performances.

The provisions of Part II of the Regulations, which amend the Act:

a) increase the duration of copyright in literary, dramatic, musical and artistic works of known authorship to life plus 70 years; make new provision for the duration of copyright in films to be linked to the lives of persons connected with a film and to last until 70 years after the death of the last of those persons to die; increase the duration of copyright in respect of works of unknown authorship to 70 years after the date upon which the work is either made, or if made available to the public during that period, from the date upon which it is first made available (regulations 5 and 6);

b) make provision for reciprocal duration of copyright in literary, dramatic, musical and artistic works, films, sound recordings and broadcasts connected with countries other than EEA States, such that the period of protection granted in the United Kingdom to those works is that granted under the legislation of the country of origin of the work, or (in the case of sound recordings and broadcasts) of which the author is a national, subject, however, to application of this provision not being at variance with any international obligation to which the United Kingdom became subject prior to 29th October 1993 (regulations 5, 6, 7 and 8);

Changes to legislation: There are currently no known outstanding effects for the The Duration of Copyright and Rights in Performances Regulations 1995. (See end of Document for details)

c) modify the meaning of “released”, in connection with the calculation of the duration of copyright in sound recordings so as to include “playing in public” (regulation 6);

d) make consequential amendments to existing provisions relating to acts permitted on assumptions as to the expiry of copyright on the death of the author (regulation 5);

e) make similar provision in relation to acts permitted on assumptions as to the expiry of copyright in a film on the death of persons by reference to whose life the copyright period in a film is ascertained (regulation 6);

f) make provision for a sound track accompanying a film to be treated as part of the film for the purposes of Part I of the Act (regulation 9);

g) modify existing provisions relating to the duration of rights in a performance such that these rights are protected for 50 years from when the performance takes place, or if a recording of the performance is released within that period, for 50 years from when the recording is first released; and also such that, where a performer is not a national of an EEA State, the duration of rights in the performance is that accorded in the country of which the performer is a national in similar manner to the provision on reciprocal duration of copyright (regulation 10);

Part III of the Regulations (which contains the transitional provisions and savings), provides—

a) for the Regulations to apply not only to works made after 1st January 1996 but also to works made before that date (regulation 14);

b) for the saving of any period of copyright which would be longer than that to which a work might otherwise be entitled under the Regulations (regulation 15);

c) for those Regulations which increase the duration of copyright in the United Kingdom to life plus seventy years to apply not only to works made after 1st January 1996 but also to works made before that date in which copyright continues to subsist on 31st December 1995, and further, to apply to works made, and in which copyright in the United Kingdom expired, before that date but which were protected on 1st July 1995 under legislation relating to copyright in any other EEA State: extended and revived copyright (regulations 16 and 17);

d) for the determination of the ownership of both extended and revived copyright (regulations 18, 19 and 20);

e) in relation to extended copyright, for any licence, term or condition of an agreement or waiver or assertion of moral rights, or any such licence, term or condition imposed by the Copyright Tribunal, effective throughout the duration of the original period of copyright, to continue throughout the period of extended copyright (regulation 21);

f) who is to exercise moral rights in respect of a revived copyright (regulation 22);

g) a saving in respect of arrangements made before 1st January 1995 so that any acts done after 1st January 1996 in pursuance of such arrangements are not to be infringements of revived copyright (regulation 23);

h) a saving in respect of the issue to the public after 1st January 1996 of copies of a revived copyright work made before 1st July 1995 and at a time when copyright in the revived work had expired (regulation 23);

i) a saving for acts done in respect of revived copyright works after 1st January 1996, where the owner of the right cannot be found by reasonable inquiry (regulation 23);

j) a saving for acts done after 1st January 1996 in respect of a literary, dramatic, musical or artistic work or film which contains a copy of, or is an adaptation of, a revived work and the copy or adaptation was made before 1st July 1995, or in pursuance of arrangements made before that date and at a time when copyright did not subsist in the revived work (regulation 23);

k) for a licence of right to do any of the acts restricted by copyright in respect of revived copyright works subject only to the payment of royalties or other payments as may be agreed or, in default of agreement, be fixed by the Copyright Tribunal, except where a licence could be granted by a licensing body (regulations 24 and 25);

l) for the saving of any period of protection of rights which would be longer than that to which a performance might otherwise be entitled under the Regulations (regulation 28);

m) for the Regulations which modify the starting point for the calculation of the duration of rights in performances in the United Kingdom to apply not only to performances taking place after 1st January 1996 but also to performances which take place before that date in which rights under Part II of the Act subsist on 31st December 1995 and further, to apply to performances in which rights under Part II of the Act, or under any earlier enactment, expired in the United Kingdom before 1st July 1995, in the event that they were protected on 1st July 1995 under legislation relating to copyright or related rights in any other EEA State: extended and revived performance rights (regulations 29 and 30);

n) for the determination of ownership of both extended and any revived performance rights (regulation 31);

o) in relation to extended and any revived performance rights, for savings corresponding to those made in respect of extended and revived copyright works, subject to necessary modifications (regulations 32 and 33);

p) for a licence of right to do any of the acts for which consent would otherwise be required in respect of a performance in which any revived performance rights subsist subject only to the payment of royalties or other payments as may be agreed or, in default of agreement, be fixed by the Copyright Tribunal (regulations 34 and 35).

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