

EXPLANATORY MEMORANDUM TO
THE COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER
COUNTRIES) (AMENDMENT) (NO.2) ORDER 2021

2021 No. 1258

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Intellectual Property Office, an executive agency of the Department for Business, Energy and Industrial Strategy, and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The UK-Norway, Iceland and Liechtenstein free trade agreement (FTA) requires the UK to provide similar levels of copyright protection to nationals of those countries as the UK provides to its own nationals. UK copyright law already largely meets this obligation. However, some types of copyright work from those countries are not protected in the UK. This instrument will extend copyright protection to those works in order to implement the UK-Norway, Iceland and Liechtenstein FTA.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument will come into force on 1 December 2021, the date on which the UK-Norway, Iceland and Liechtenstein FTA will be provisionally applied between the UK and Norway. The instrument will extend copyright protection to nationals of each of Norway, Iceland and Liechtenstein at the same time, notwithstanding that the FTA will not come into force for Iceland and Liechtenstein until a later date. The government is satisfied that, by the full coming-into-force date of the FTA, provision will be made in those countries to provide equivalent protection to UK nationals.
- 3.2 The commencement date of this instrument is less than 21 days after the instrument is laid in Parliament. It was not possible to lay the instrument at an earlier date, due to the need to await Parliament's approval of the FTA before making legislation to implement it. A later coming-into-force date would mean the UK is unable to provisionally apply the FTA from 1 December.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is all of the United Kingdom.
- 4.2 The territorial application of this instrument is all of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Copyright is a national right. Each country has its own copyright law that governs the protection in that country. However, most copyright works are protected internationally. The UK and most other countries are members of one or more of the multilateral treaties on copyright. These treaties set minimum standards of protection that countries must provide in their law. They also require that countries extend protection to nationals of other treaty countries.
- 6.2 The UK is also party to several bilateral and plurilateral trade agreements. Many of these replicate and go beyond the copyright standards in the multilateral treaties. These trade agreements require the UK to provide certain levels of copyright protection specifically to works and performances from the UK's trading partners.
- 6.3 Among these is the UK-Norway, Iceland and Liechtenstein FTA. The FTA requires the UK to provide extensive protection to works and performances from those countries (and vice versa).
- 6.4 In the UK, copyright protection for foreign works and performances is provided by the Copyright, Designs and Patents Act 1988 ("the CDPA") and the Copyright and Performances (Application to Other Countries) Order 2016 ("the 2016 Order"), as amended. Under the CDPA and the 2016 Order, foreign works and performances are given full, limited, or no protection, based generally on whether and how the country of origin of the work or performance has implemented the relevant treaty.
- 6.5 Most works and performances from Norway, Iceland and Liechtenstein receive protection under the CDPA and the 2016 Order. However, certain categories of work (specifically, wired broadcasts, such as cable broadcasts) from Norway, Iceland and Liechtenstein do not. This is inconsistent with the UK's obligations under the FTA.

7. Policy background

What is being done and why?

- 7.1 This instrument will amend the 2016 Order to extend copyright protection to wired broadcasts from Norway, Iceland and Liechtenstein. This will bring UK copyright law into line with the requirements of the UK-Norway, Iceland and Liechtenstein FTA.
- 7.2 Following these changes, wired broadcasts from those countries will enjoy protection equivalent to that already enjoyed by wireless broadcasts from those countries, as well as wired and wireless broadcasts from the UK. This is not expected to have a significant practical impact. Data from the European Audiovisual Observatory's MAVISE database on audiovisual services in Europe suggests that few television channels broadcast from Norway, Iceland and Liechtenstein are directed at pan-European audiences, and none directly target the UK. As such, affected broadcasts are likely to be of limited commercial value and interest in the UK. Additionally, these changes will affect only the protection for broadcast signals themselves. The content in the broadcasts (such as films, television programmes and music) will already receive protection in the UK and are unaffected by this instrument. Nonetheless, these changes are necessary for the UK to meet its international obligations.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidated text of the 2016 Order as amended by this instrument is being prepared.

10. Consultation outcome

10.1 No consultation has been carried out for this instrument as the impact of its changes are minimal.

11. Guidance

11.1 The Intellectual Property Office maintains guidance on the protection of foreign works and performances under UK copyright law. The guidance will be updated to reflect the changes made by this instrument before it comes into force.

12. Impact

12.1 The impact on businesses charities or voluntary bodies is expected to be significantly below the de minimis threshold of £5 million per year. Only a small class of broadcasts will be affected by this instrument, and these are expected to be of limited consumer interest and limited commercial value in the UK. The primary aim of this instrument is to ensure UK compliance with the UK-Norway, Iceland, and Liechtenstein FTA, rather than to implement any significant change in domestic policy.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of the small impact as set out above.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. This is because the impact of the instrument, including on small businesses, is expected to be minimal.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, George Freeman MP has made the following statement: taking into account the economic impact of this provision, a review would be disproportionate.

15. Contact

15.1 David Burns at the Intellectual Property Office, telephone: 01633 811445 or email: david.burns@ipo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Mills, Director of Copyright and Enforcement at the Intellectual Property Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 George Freeman MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.