

EXPLANATORY MEMORANDUM TO
THE COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER
COUNTRIES) (AMENDMENT) ORDER 2023

2023 No. 296

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Intellectual Property Office, an executive agency of the Department for Science, Innovation and Technology, and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The UK has agreed free trade agreements (FTAs) with Australia and New Zealand. The intellectual property chapters of these agreements require the UK to accord nationals of Australia and New Zealand the same rights accorded to UK nationals in respect of their intellectual property rights, subject to certain specified exceptions.
- 2.2 While UK copyright law already largely achieves this, there are minor exceptions in the case of rights in broadcasts. Broadcasts transmitted by wired means originating in Australia or New Zealand do not enjoy protection in the UK, while wireless broadcasts from New Zealand receive only limited protection. In advance of the Australia and New Zealand FTAs coming into force this instrument extends rights to ensure that nationals of Australia and New Zealand have full protection in the UK for their broadcasts.
- 2.3 Additionally, through the UK's membership of multilateral treaties on copyright and related rights, the UK is required to protect works and performances originating in other member countries. This instrument updates the UK legislation that fulfils these obligations to extend protection to countries that have recently acceded to the WIPO (World Intellectual Property Organization) Performance and Phonograms Treaty (WPPT).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The 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 The UK is a member of several multilateral treaties on copyright and rights in performances. These treaties require member countries to set minimum standards of

copyright protection, which members must extend to works and performances originating in other member countries. These treaties include:

- The Berne Convention for the Protection of Literary and Artistic Works;
- The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention);
- The WIPO Copyright Treaty;
- The WPPT; and
- The WTO (World Trade Organization) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

- 6.2 The UK is also party to several bilateral and plurilateral FTAs. Many of these replicate and, in some cases, go further than the copyright obligations in the multilateral treaties. These FTAs require the UK to provide certain levels of copyright protection specifically to works and performances from trading partners.
- 6.3 Among these agreements are the recently agreed UK-Australia and UK-New Zealand FTAs. When these FTAs enter into force, they will require the UK to provide wide-ranging copyright protections to works and performances originating in Australia and New Zealand (and vice versa).
- 6.4 In the UK, copyright protection for foreign works and performances is provided for by the Copyright, Designs and Patents Act 1988 (the CDPA) and the Copyright and Performance (Application to Other Countries) Order 2016 (the 2016 Order). 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 Australia and New Zealand already receive protection under the CDPA and the 2016 Order, because those countries are party to a relevant treaty. However, certain categories of work (specifically, wired broadcasts from Australia, and wired and wireless broadcasts from New Zealand) receive limited or no protection under UK law at present. This is inconsistent with the UK-Australia and UK-New Zealand FTAs, which require that protection be extended between the parties in respect of these works.
- 6.6 Additionally, the 2016 Order extends rights in performances to countries that are party to the WPPT or TRIPs through a list of member countries that must be updated as countries accede to those agreements. Since the list was last updated, certain countries have joined WPPT and need to be added to the list in the 2016 Order to ensure that their nationals enjoy appropriate protection in UK law.

7. Policy background

What is being done and why?

- 7.1 In advance of the Australia and New Zealand FTAs coming into force this instrument amends the 2016 Order ensuring that wired and wireless broadcasts originating in Australia and New Zealand enjoy protection in UK copyright law. This is achieved by adding Australia and New Zealand to the list of countries in Article 8(1) of the 2016 Order, which sets out the specific countries eligible for protection of non-wireless broadcasts in the UK. Given New Zealand is not party to the Rome Convention the legislation also adds New Zealand to the list of countries in Article 8(2) of the 2016

Order, which specifies countries from which wireless broadcasts are eligible for protection.

- 7.2 Separately the instrument ensures that, following its accession to the WPPT, Ugandan nationals enjoy protection for performances in the UK consistent with the standards in the WPPT. The instrument does so by adding Uganda to Article 11 of the 2016 Order, reflecting its status as a WPPT member.

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 amended by this instrument is being prepared.

10. Consultation outcome

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

11. Guidance

- 11.1 The Intellectual Property Office maintains guidance on the protection of foreign works and performances in UK copyright law. This guidance will be updated to reflect this instrument before its entry into force.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is expected to be minimal. The provisions that extend rights to broadcasts from Australia and New Zealand are unlikely to have significant impacts. This is due to the limited use of those broadcasts in the UK and that the content of those broadcasts in the UK already enjoys protection under existing law. The provisions that extend rights to performance from Uganda are unlikely to have any significant impacts on UK parties, due to the limited consumption of music from Uganda in the UK.
- 12.2 The impact on the public sector is expected to be minimal. This is for the same reasons set out in the paragraph 12.1.
- 12.3 An impact assessment has not been prepared for this instrument as the impacts are expected to be below the de minimis threshold of £5 million per year.

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 in small businesses. This is because the impact of the instrument, including on small business, is expected to be minimal.

14. Monitoring & review

- 14.1 The instrument 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 account the economic impact of this provision, a review would be disproportionate.

15. Contact

- 15.1 Thomas Selley at the Intellectual Property Office Telephone: 01633 433063 or email: thomas.selley@ipo.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Chris Mills, Director of Rights Policy and Enforcement at the Intellectual Property Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Freeman at the Department for Science, Innovation and Technology can confirm that this Explanatory Memorandum meets the required standard.