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**Changes to legislation:** There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, PART 2. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 22

#### LICENSING OF COPYRIGHT AND PERFORMERS' RIGHTS

#### PART 2

##### PERFORMERS' RIGHTS

- 2 Schedule 2A to the Copyright, Designs and Patents Act 1988 (licensing of performers' property rights) is amended as follows.
- 3 In the heading of the Schedule omit “property”.
- 4 In paragraph 1, after sub-paragraph (4) insert—
- “*(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.*”
- 5 After paragraph 1 insert—

##### *“Power to provide for licensing of orphan rights*”

- 1A (1) The Secretary of State may by regulations provide for the grant of licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where—
- (a) the performer's consent would otherwise be required under that section, but
  - (b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.
- (2) The regulations may—
- (a) specify a person or a description of persons authorised to grant licences, or
  - (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences.
- (3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations must provide for any licence—
- (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a missing owner and

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to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.

*Extended collective licensing*

- 1B (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.
- (2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.
- (3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.

*General provision about licensing*

- 1C (1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.
- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
- (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
- (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
- (a) the deduction of administrative costs;
  - (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as bona vacantia or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
- (a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;

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- (d) for a right conferred by section 205C to be treated as having been asserted under section 205D;
  - (e) for the payment of fees to cover administrative expenses.
- 1D (1) The power to make regulations includes power—
- (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
  - (b) to make transitional, transitory or saving provision;
  - (c) to make different provision for different purposes.
- (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
- (3) Regulations may make provision by reference to guidance issued from time to time by any person.
- (4) The power to make regulations is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- 6 In section 205A of the Copyright, Designs and Patents Act 1988, and in the italic heading before that section (licensing of performers' property rights), omit “property”.

**Changes to legislation:**

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