
STATUTORY INSTRUMENTS

1995 No. 3297

**The Duration of Copyright and Rights
in Performances Regulations 1995**

Part III

Savings and transitional provisions

Rights in performances

Rights in performances: interpretation

27.—(1) In the provisions of this Part relating to rights in performances—

- (a) “existing”, in relation to a performance, means given before commencement; and
- (b) “existing protected performance” means a performance in relation to which rights under Part II of the 1988 act (rights in performances) subsisted immediately before commencement.

(2) References in this Part to performers' rights are to the rights given by section 180(1)(a) of the 1988 Act and references to recording rights are to the rights given by section 180(1)(b) of that Act.

Duration of rights in performances: general saving

28. Any rights under Part II of the 1988 Act in an existing protected performance shall continue to subsist until the date on which they would have expired under the 1988 provisions if that date is later than the date on which the rights would expire under the new provisions.

Duration of rights in performances: application of new provisions

29. The new provisions relating to the duration of rights under Part II of the 1988 Act apply—

- (a) to performances taking place after commencement;
- (b) to existing performances which first qualify for protection under Part II of the 1988 Act after commencement;
- (c) to existing protected performances, subject to Regulation 28 (general saving for any longer period applicable under 1988 provisions); and
- (d) to existing performances—
 - (i) in which rights under Part II of the 1988 Act expired after the commencement of that Part and before 31st December 1995, or
 - (ii) which were protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part,

but which were on 1st July 1995 protected in another EEA state under legislation relating to copyright or related rights.

Extended and revived performance rights

30. In the following provisions of this Part—

“extended performance rights” means rights under Part II of the 1988 Act which subsist by virtue of the new provisions after the date on which they would have expired under the 1988 provisions; and

“revived performance rights” means rights under Part II of the 1988 Act which subsist by virtue of the new provisions—

- (a) after having expired under the 1988 provisions, or
- (b) in relation to a performance which was protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part.

References in the following provisions of this Part to “revived pre-1988 rights” are to revived performance rights within paragraph (b) of the above definition.

Entitlement to extended or revived performance rights

31.—(1) Any extended performance rights are exercisable as from commencement by the person who was entitled to exercise those rights immediately before commencement, that is—

- (a) in the case of performers' rights, the performer or (if he has died) the person entitled by virtue of section 192(2) of the 1988 Act to exercise those rights;
- (b) in the case of recording rights, the person who was within the meaning of section 185 of the 1988 Act the person having those rights.

(2) Any revived performance rights are exercisable as from commencement—

- (a) in the case of rights which expired after the commencement of the 1988 Act, by the person who was entitled to exercise those rights immediately before they expired;
- (b) in the case of revived pre-1988 performers' rights, by the performer or his personal representatives;
- (c) in the case of revived pre-1988 recording rights, by the person who would have been the person having those rights immediately before the commencement of the 1988 Act or, if earlier, immediately before the death of the performer, applying the provisions of section 185 of that Act to the circumstances then obtaining.

(3) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by paragraph (1) or (2) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

Extended performance rights: existing consents, agreement, &c.

32. Any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—

- (a) subsists immediately before commencement, and
- (b) is not to expire before the end of the period for which rights under Part II of the 1988 Act subsist in relation to that performance,

shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

Revived performance rights: saving for acts of exploitation when performance in public domain, &c.

33.—(1) No act done before commencement shall be regarded as infringing revived performance rights in a performance.

(2) It is not an infringement of revived performance rights in a performance—

- (a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when the performance was not protected, or
- (b) to issue to the public after commencement a recording of a performance made before 1st July 1995 at a time when the performance was not protected.

(3) It is not an infringement of revived performance rights in a performance to do anything after commencement in relation to a sound recording or film made before commencement, or made in pursuance of arrangements made before commencement, which contains a recording of the performance if—

- (a) the recording of the performance was made before 1st July 1995 at a time when the performance was not protected, or
- (b) the recording of the performance was made in pursuance of arrangements made before 1st July 1995 at a time when the performance was not protected.

(4) It is not an infringement of revived performance rights in a performance to do after commencement anything at a time when, or in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this Regulation “arrangements” means arrangements for the exploitation of the performance in question.

(6) References in this Regulation to a performance being protected are—

- (a) in relation to the period after the commencement of the 1988 Act, to rights under Part II of that Act subsisting in relation to the performance, and
- (b) in relation to earlier periods, to the consent of the performer being required under earlier enactments relating to the protection of performers.

Revived performance rights: use as of right subject to reasonable remuneration

34.—(1) In the case of a performance in which revived performance rights subsist any acts which require the consent of any person under Part II of the 1988 Act (the “rights owner”) shall be treated as having that consent, subject only to the payment of such reasonable remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the rights owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as having consent.

(4) If he does give such notice, his acts shall be treated as having consent and reasonable remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

Revived performance rights: application to Copyright Tribunal

35.—(1) An application to settle the remuneration payable in pursuance of Regulation 34 may be made to the Copyright Tribunal by the rights owner or the person claiming to be treated as having his consent.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that paragraph.

(5) An order under paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.