

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 2

Section 189.

#### RIGHTS IN PERFORMANCES: PERMITTED ACTS

##### Modifications etc. (not altering text)

- C1** Sch. 2 continued (31.10.2003) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , **reg. 33** (with [regs. 31-40](#) )

##### *Introductory*

- 1 (1) The provisions of this Schedule specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by [<sup>F1</sup>this Chapter]; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) No inference shall be drawn from the description of any act which may by virtue of this Schedule be done without infringing the rights conferred by [<sup>F1</sup>this Chapter] as to the scope of those rights.
- (3) The provisions of this Schedule are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

##### Textual Amendments

- F1** Words in Sch. 2 para. 1(1)(2) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , **reg. 2** , **Sch. para. 9** (with [reg. 8](#) )

##### *[<sup>F2</sup>Making of temporary copies*

##### Textual Amendments

- F2** Sch. 2 para. 1A and cross-heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , **reg. 8(2)** (with [regs. 31-40](#) )

- 1A The rights conferred by [<sup>F3</sup>this Chapter] are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—
- (a) a transmission of the recording in a network between third parties by an intermediary; or
- (b) a lawful use of the recording;

*Status: Point in time view as at 31/07/2017.*

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and which has no independent economic significance.]

#### Textual Amendments

- F3** Words in Sch. 2 para. 1A substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), [reg. 2](#), [Sch. para. 9](#) (with [reg. 8](#))

*[<sup>F4</sup>Personal copies of recordings for private use*

#### Textual Amendments

- F4** Sch. 2 para. 1B and cross-heading inserted (1.10.2014) by [The Copyright and Rights in Performances \(Personal Copies for Private Use\) Regulations 2014 \(S.I. 2014/2361\)](#), [regs. 1\(1\), 3\(3\)](#) (with [reg. 5](#)) (but note that the amending S.I. was quashed with prospective effect by the High Court in the case of *R (British Academy of Songwriters, Composers and Authors and others) v Secretary of State for Business, Innovation and Skills* [2015] EWHC 2041 (Admin), 17 July 2015)

- 1B. (1) The making of a copy of a recording of a performance by an individual does not infringe the rights conferred by this Chapter provided that the copy—
- (a) is a copy of—
    - (i) the individual’s own copy of the recording, or
    - (ii) a personal copy of the recording made by the individual,
  - (b) is made for the individual’s private use, and
  - (c) is made for ends which are neither directly nor indirectly commercial.
- (2) In this paragraph “the individual’s own copy” is a copy of a recording which—
- (a) has been lawfully acquired by the individual on a permanent basis,
  - (b) is not an illicit recording, and
  - (c) has not been made under any provision of this Schedule which permits the making of a copy without infringing the rights conferred by this Chapter.
- (3) In this paragraph a “personal copy” means a copy made under this paragraph.
- (4) The rights conferred by this Chapter in a recording are infringed if an individual transfers a personal copy of the recording to another person (otherwise than on a private and temporary basis), except where the transfer is authorised by the rights owner.
- (5) If the rights conferred by this Chapter are infringed as set out in sub-paragraph (4), a personal copy which has been transferred is for all purposes subsequently treated as an illicit recording.
- (6) The rights conferred by this Chapter in a recording are also infringed if an individual, having made a personal copy of the recording, transfers the individual’s own copy of the recording to another person (otherwise than on a private and temporary basis) and, after that transfer and without the consent of the rights owner, retains any personal copy.
- (7) If the rights conferred by this Chapter are infringed as set out in sub-paragraph (6), any retained personal copy is for all purposes subsequently treated as an illicit recording.

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (8) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.
- (9) Expressions used but not defined in this paragraph have the same meaning as in section 28B.]

### *[<sup>F5</sup>Research and private study*

#### **Textual Amendments**

**F5** Sch. 2 paras. 1C, 1D and cross-headings inserted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), regs. 1, **3(3)**

- 1C. (1) Fair dealing with a performance or a recording of a performance for the purposes of research for a non-commercial purpose does not infringe the rights conferred by this Chapter.
- (2) Fair dealing with a performance or recording of a performance for the purposes of private study does not infringe the rights conferred by this Chapter.
- (3) Copying of a recording by a person other than the researcher or student is not fair dealing if—
  - (a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under paragraph 6F (copying by librarians: single copies of published recordings), or
  - (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.
- (4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.
- (5) Expressions used in this paragraph have the same meaning as in section 29.

### *Copies for text and data analysis for non-commercial research*

- 1D. (1) The making of a copy of a recording of a performance by a person who has lawful access to the recording does not infringe any rights conferred by this Chapter provided that the copy is made in order that a person who has lawful access to the recording may carry out a computational analysis of anything recorded in the recording for the sole purpose of research for a non-commercial purpose.
- (2) Where a copy of a recording has been made under this paragraph, the rights conferred by this Chapter are infringed if—
  - (a) the copy is transferred to any other person, except where the transfer is authorised by the rights owner, or
  - (b) the copy is used for any purpose other than that mentioned in subparagraph (1), except where the use is authorised by the rights owner.

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (3) If a copy of a recording made under this paragraph is subsequently dealt with—
- (a) it is to be treated as an illicit recording for the purposes of that dealing, and
  - (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.
- (4) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.
- (5) Expressions used in this paragraph have the same meaning as in section 29A.]

*Criticism, reviews<sup>[F6]</sup>, quotation<sup>[F6]</sup> and news reporting*

**Textual Amendments**

**F6** Word in Sch. 2 para. 2 heading inserted (1.10.2014) by [S.I. 2014/2356](#) reg. 4(2)

- 2 <sup>[F7]</sup>(1) Fair dealing with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by <sup>[F8]</sup>this Chapter] provided that the performance or recording has been made available to the public.
- <sup>[F9]</sup>(1ZA) The rights conferred by this Chapter in a performance or a recording of a performance are not infringed by the use of a quotation from the performance or recording (whether for criticism or review or otherwise) provided that—
- (a) the performance or recording has been made available to the public,
  - (b) the use of the quotation is fair dealing with the performance or recording, and
  - (c) the extent of the quotation is no more than is required by the specific purpose for which it is used.]
- (1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by <sup>[F8]</sup>this Chapter].]
- <sup>[F10]</sup>(1B) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of sub-paragraph (1ZA), would not infringe any right conferred by this Chapter, that term is unenforceable.]
- (2) Expressions used in this paragraph have the same meaning as in section 30.

**Textual Amendments**

- F7** Sch. 2 para. 2(1)(1A) substituted (31.10.2003) for Sch. 2 para. 2(1) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , [reg. 10\(2\)](#) (with [regs. 31-40](#) )
- F8** Words in Sch. 2 para. 2(1)(1A) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 9](#) (with [reg. 8](#) )
- F9** Sch. 2 para. 2(1ZA) inserted (1.10.2014) by [The Copyright and Rights in Performances \(Quotation and Parody\) Regulations 2014 \(S.I. 2014/2356\)](#), [regs. 1, 4\(3\)](#)
- F10** Sch. 2 para. 2(1B) inserted (1.10.2014) by [The Copyright and Rights in Performances \(Quotation and Parody\) Regulations 2014 \(S.I. 2014/2356\)](#), [regs. 1, 4\(4\)](#)

*Status: Point in time view as at 31/07/2017.*

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*[<sup>F11</sup>Caricature, parody or pastiche*

**Textual Amendments**

**F11** Sch. 2 para. 2A and cross-heading inserted (1.10.2014) by [The Copyright and Rights in Performances \(Quotation and Parody\) Regulations 2014 \(S.I. 2014/2356\)](#), regs. 1, **5(2)**

- 2A. (1) Fair dealing with a performance or a recording of a performance for the purposes of caricature, parody or pastiche does not infringe the rights conferred by this Chapter in the performance or recording.
- (2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.
- (3) Expressions used in this paragraph have the same meaning as in section 30A.]

*Incidental inclusion of performance or recording*

- 3 (1) The rights conferred by [<sup>F12</sup>this Chapter] are not infringed by the incidental inclusion of a performance or recording in a sound recording, film [<sup>F13</sup>or broadcast].
- (2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing [<sup>F14</sup>or communication to the public] of, anything whose making was, by virtue of sub-paragraph (1), not an infringement of those rights.
- (3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording [<sup>F13</sup>or broadcast] if it is deliberately included.
- (4) Expressions used in this paragraph have the same meaning as in section 31.

**Textual Amendments**

**F12** Words in Sch. 2 para. 3(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , reg. 2 , **Sch. para. 9** (with reg. 8 )

**F13** Words in Sch. 2 para. 3(1)(3) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , reg. 2(1) , **Sch. 1 para. 3(1)(l)(m)** (with regs. 31-40 )

**F14** Words in Sch. 2 para. 3(2) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , reg. 2(1) , **Sch. 1 para. 6(2)(e)** (with regs. 31-40 )

*[<sup>F15</sup>Disabled persons: copies of recordings for personal use*

**Textual Amendments**

**F15** Sch. 2 paras. 3A-3E and cross-headings inserted (1.6.2014) by [The Copyright and Rights in Performances \(Disability\) Regulations 2014 \(S.I. 2014/1384\)](#), regs. 1(1), **3**

- 3A. (1) This paragraph applies if—
- (a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a recording of a performance, and

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (b) the person’s disability prevents the person from enjoying the recording to the same degree as a person who does not have that disability.
- (2) The making of an accessible copy of the copy of the recording referred to in sub-paragraph (1)(a) does not infringe the rights conferred by this Chapter if—
  - (a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,
  - (b) the copy is made for the disabled person’s personal use, and
  - (c) the same kind of accessible copies of the recording are not commercially available on reasonable terms by or with the authority of the rights owner.
- (3) If a person makes an accessible copy under this paragraph on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.
- (4) The rights conferred by this Chapter are infringed by the transfer of an accessible copy of a recording made under this paragraph to any person other than—
  - (a) a person by or for whom an accessible copy of the recording may be made under this paragraph, or
  - (b) a person who intends to transfer the copy to a person falling within paragraph (a),
 except where the transfer is authorised by the rights owner.
- (5) An accessible copy of a recording made under this paragraph is to be treated for all purposes as an illicit recording if it is held by a person at a time when the person does not fall within sub-paragraph (4)(a) or (b).
- (6) If an accessible copy of a recording made under this paragraph is subsequently dealt with—
  - (a) it is to be treated as an illicit recording for the purposes of that dealing, and
  - (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

*Making and supply of accessible copies by authorised bodies*

- 3B. (1) If an authorised body has lawful possession of or lawful access to a copy of the whole or part of a recording of a performance (including a recording of a performance included in a broadcast), the body may, without infringing the rights conferred by this Chapter, make and supply accessible copies of the recording for the personal use of disabled persons.
- (2) If an authorised body has lawful access to the whole or part of a broadcast, the body may, without infringing the rights conferred by this Chapter, make a recording of the broadcast, and make and supply accessible copies of the recording, for the personal use of disabled persons.
- (3) But sub-paragraphs (1) and (2) do not apply if the same kind of accessible copies of the recording, or of the broadcast, are commercially available on reasonable terms by or with the consent of the rights owner.
- (4) For the purposes of sub-paragraphs (1) and (2), supply “for the personal use of disabled persons” includes supply to a person acting on behalf of a disabled person.

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- (5) An authorised body which is an educational establishment conducted for profit must ensure that any accessible copies which it makes under this paragraph are used only for its educational purposes.
- (6) An accessible copy made under this paragraph must be accompanied by a statement that it is made under this paragraph, unless it is accompanied by an equivalent statement in accordance with section 31B(7).
- (7) If an accessible copy is made under this paragraph of a recording which is in copy-protected electronic form, the accessible copy must, so far as is reasonably practicable, incorporate the same or equally effective copy protection (unless the rights owner agrees otherwise).
- (8) An authorised body which has made an accessible copy of a recording under this paragraph may supply it to another authorised body which is entitled to make accessible copies of the recording under this paragraph for the purposes of enabling that other body to make accessible copies of the recording.
- (9) If an authorised body supplies an accessible copy it has made under this paragraph to a person or authorised body as permitted by this paragraph and charges the person or body for it, the sum charged must not exceed the cost of making and supplying the copy.
- (10) If an accessible copy of a recording made under this paragraph is subsequently dealt with—
  - (a) it is to be treated as an illicit recording for the purposes of that dealing, and
  - (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

*Making and supply of intermediate copies by authorised bodies*

- 3C.
- (1) An authorised body which is entitled to make an accessible copy of a recording of a performance under paragraph 3B may, without infringing the rights conferred by this Chapter, make a copy of the recording (“an intermediate copy”) if this is necessary in order to make the accessible copy.
  - (2) An authorised body which has made an intermediate copy of a recording under this paragraph may supply it to another authorised body which is entitled to make accessible copies of the recording under paragraph 3B for the purposes of enabling that other body to make accessible copies of the recording.
  - (3) The rights conferred by this Chapter are infringed by the transfer of an intermediate copy made under this paragraph to a person other than another authorised body as permitted by sub-paragraph (2), except where the transfer is authorised by the rights owner.
  - (4) If an authorised body supplies an intermediate copy to an authorised body under sub-paragraph (2) and charges the body for it, the sum charged must not exceed the cost of making and supplying the copy.

*Accessible and intermediate copies: records*

- 3D.
- (1) An authorised body must keep a record of—
    - (a) accessible copies it makes under paragraph 3B,

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (b) intermediate copies it makes under paragraph 3C, and
  - (c) the persons to whom such copies are supplied.
- (2) An authorised body must allow the rights owner or a person acting for the rights owner, on giving reasonable notice, to inspect the records at any reasonable time.

*Paragraphs 3A to 3D: interpretation and general*

- 3E. (1) This paragraph supplements paragraphs 3A to 3D and includes definitions.
- (2) “Disabled person” means a person who has a physical or mental impairment which prevents the person from enjoying a recording of a performance to the same degree as a person who does not have that impairment, and “disability” is to be construed accordingly.
- (3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.
- (4) An “accessible copy” of a recording of a performance means a version of the recording which enables the fuller enjoyment of the recording by disabled persons.
- (5) An accessible copy—
- (a) may include facilities for navigating around the version of the recording, but
  - (b) must not include any changes to the recording which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.
- (6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of paragraph 3A, 3B or 3C, would not infringe any right conferred by this Chapter, that term is unenforceable.
- (7) “Authorised body” and “supply” have the meaning given in section 31F, and other expressions used in paragraphs 3A to 3D but not defined in this paragraph have the same meaning as in sections 31A to 31BB.]

*[<sup>F16</sup>Illustration for instruction*

**Textual Amendments**

**F16** Sch. 2 para. 4 substituted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), regs. 1, **4(4)**

4. (1) Fair dealing with a performance or a recording of a performance for the sole purpose of illustration for instruction does not infringe the rights conferred by this Chapter provided that the dealing is—
- (a) for a non-commercial purpose, and
  - (b) by a person giving or receiving instruction (or preparing for giving or receiving instruction).
- (2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.



*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

(3) Expressions used in this paragraph have the same meaning as in section 32.]

*Playing or showing sound recording, film, [<sup>F17</sup>or broadcast]at educational establishment*

#### Textual Amendments

**F17** Words in heading preceding Sch. 2 para. 5 substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , reg. 2(1) , **Sch. 1 para. 2(2)** (with regs. 31-40 )

- 5
- (1) The playing or showing of a sound recording, film [<sup>F18</sup>or broadcast] at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by [<sup>F19</sup>this Chapter] .
  - (2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.
  - (3) Expressions used in this paragraph have the same meaning as in section 34 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

#### Textual Amendments

**F18** Words in Sch. 2 para. 5(1) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , reg. 2(1) , **Sch. 1 para. 3(1)(n)** (with regs. 31-40 )

**F19** Words in Sch. 2 para. 5(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , reg. 2 , **Sch. para. 9** (with reg. 8 )

*[<sup>F20</sup>Recording by educational establishments of broadcasts*

#### Textual Amendments

**F20** Sch. 2 paras. 6, 6ZA and cross-headings substituted (1.6.2014) for Sch. 2 para. 6 and cross-heading by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#) , regs. 1, **4(5)**

- 6.
- (1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing any of the rights conferred by this Chapter in relation to any performance or recording included in it, provided that the educational purposes are non-commercial.
  - (2) The rights conferred by this Chapter are not infringed where a recording of a broadcast or a copy of such a recording, made under sub-paragraph (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the non-commercial educational purposes of that establishment.

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (3) Sub-paragraph (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.
- (4) Acts which would otherwise be permitted by this paragraph are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.
- (5) If a recording made under this paragraph is subsequently dealt with—
  - (a) it is to be treated as an illicit recording for the purposes of that dealing, and
  - (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.
- (6) In this paragraph “dealt with” means—
  - (a) sold or let for hire,
  - (b) offered or exposed for sale or hire, or
  - (c) communicated otherwise than as permitted by sub-paragraph (2).
- (7) Expressions used in this paragraph (other than “dealt with”) have the same meaning as in section 35 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

*Copying and use of extracts of recordings by educational establishments*

- 6ZA. (1) The copying of extracts of a recording of a performance by or on behalf of an educational establishment does not infringe any of the rights conferred by this Chapter in the recording provided that the copy is made for the purposes of instruction for a non-commercial purpose.
- (2) The rights conferred by this Chapter are not infringed where an extract of a recording of a performance, made under sub-paragraph (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.
  - (3) Sub-paragraph (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.
  - (4) Not more than 5% of a recording may be copied under this paragraph by or on behalf of an educational establishment in any period of 12 months.
  - (5) Acts which would otherwise be permitted by this paragraph are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.
  - (6) The terms of a licence granted to an educational establishment authorising acts permitted by this paragraph are of no effect so far as they purport to restrict the proportion of a recording which may be copied (whether on payment or free of charge) to less than that which would be permitted by this paragraph.
  - (7) If a recording made under this paragraph is subsequently dealt with—
    - (a) it is to be treated as an illicit recording for the purposes of that dealing, and

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.
- (8) In this paragraph “dealt with” means—
- (a) sold or let for hire,
  - (b) offered or exposed for sale or hire, or
  - (c) communicated otherwise than as permitted by sub-paragraph (2).
- (9) Expressions used in this paragraph (other than “dealt with”) have the same meaning as in section 36 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.]

*<sup>F21</sup>[ Lending of copies by educational establishments ]*

**Textual Amendments**

**F21** Sch. 2 para. 6A and crossheading inserted (1.12.1996) by [S.I. 1996/2967](#) , **reg. 20(3)** (with Pt. III )

- [<sup>F22</sup>6A(1) The rights conferred by [<sup>F23</sup>this Chapter] are not infringed by the lending of copies of a recording of a performance by an educational establishment.
- (2) Expressions used in this paragraph have the same meaning as in section 36A; and any provision with respect to the application of that section made under section 174(2) (instruction given elsewhere than an educational establishment) applies also for the purposes of this paragraph.]

**Textual Amendments**

**F22** Sch. 2 para. 6A inserted (1.12.1996) by [S.I. 1996/2967](#) , **reg. 20(3)** (with Pt. III )

**F23** Words in Sch. 2 para. 6A(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , **reg. 2** , **Sch. para. 9** (with reg. 8 )

*<sup>F24</sup>[ Lending of copies by libraries or archives ]*

**Textual Amendments**

**F24** Sch. 2 para. 6B and crossheading inserted (1.12.1996) by [S.I. 1996/2967](#) , **reg. 20(3)** (with Pt. III )

- [<sup>F25</sup> 6B(1) The rights conferred by [<sup>F26</sup> this Chapter ] are not infringed by the lending of copies of a recording of a performance by a <sup>F27</sup> ... library or archive (other than a public library) which is not conducted for profit.
- [ The rights conferred by this Chapter are not infringed by the following acts by a <sup>F28</sup>(A1) public library in relation to a book within the public lending right scheme—
- (a) lending the book;
  - (b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.
- (A2) Expressions used in sub-paragraph (A1) have the same meaning as in section 40A(1).]

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

<sup>F29</sup>( 2 ) . . . . . ] .

#### Textual Amendments

- F25** Sch. 2 para. 6B inserted (1.12.1996) by [S.I. 1996/2967](#), **reg. 20(3)** (with Pt. III)
- F26** Words in Sch. 2 para. 6B(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), **reg. 2**, **Sch. para. 9** (with reg. 8)
- F27** Word in Sch. 2 para. 6B(1) omitted (1.6.2014) by virtue of [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), **reg. 1**, **Sch. para. 8(a)**
- F28** Sch. 2 para. 6B(A1)(A2) inserted (30.6.2014) by [Digital Economy Act 2010 \(c. 24\)](#), **ss. 43(8)(a)**, 47(3) (d); [S.I. 2014/1659](#), **art. 2**
- F29** Sch. 2 para. 6B(2) omitted (1.6.2014) by virtue of [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), **reg. 1**, **Sch. para. 8(b)**

#### Modifications etc. (not altering text)

- C2** Sch. 2 para. 6B modified (1.12.1996) by [S.I. 1996/2967](#), **reg. 35** (with Pt. III)

*<sup>F30</sup> Libraries and educational establishments etc : making recordings of performances available through dedicated terminals*

#### Textual Amendments

- F30** Sch. 2 paras. 6C-6H and cross-headings inserted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), **regs. 1, 6**

- 6C. (1) The rights conferred by this Chapter in a recording of a performance are not infringed by an institution specified in sub-paragraph (2) communicating the recording to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in sub-paragraph (3) are met.
- (2) The institutions are—
- (a) a library,
  - (b) an archive,
  - (c) a museum, and
  - (d) an educational establishment.
- (3) The conditions are that the recording or a copy of the recording—
- (a) has been lawfully acquired by the institution,
  - (b) is communicated or made available to individual members of the public for the purposes of research or private study, and
  - (c) is communicated or made available in compliance with any purchase or licensing terms to which the recording is subject.

*Copying by librarians: supply of single copies to other libraries*

- 6D. (1) A librarian may, if the conditions in sub-paragraph (2) are met, make a single copy of the whole or part of a published recording of a performance and supply it to another library, without infringing any rights conferred by this Chapter in the recording.
- (2) The conditions are—

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*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

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- (a) the copy is supplied in response to a request from a library which is not conducted for profit, and
  - (b) at the time of making the copy the librarian does not know, or could not reasonably find out, the name and address of a person entitled to authorise the making of a copy of the recording.
- (3) Where a library makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.
- (4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

*Copying by librarians etc : replacement copies of recordings*

- 6E. (1) A librarian, archivist or curator of a library, archive or museum may, without infringing any rights conferred by this Chapter, make a copy of a recording of a performance in that institution's permanent collection—
- (a) in order to preserve or replace that recording in that collection, or
  - (b) where a recording in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the recording in the collection of that other library, archive or museum,
- provided that the conditions in sub-paragraphs (2) and (3) are met.
- (2) The first condition is that the recording is—
- (a) included in the part of the collection kept wholly or mainly for the purposes of reference on the institution's premises,
  - (b) included in a part of the collection not accessible to the public, or
  - (c) available on loan only to other libraries, archives or museums.
- (3) The second condition is that it is not reasonably practicable to purchase a copy of the recording to achieve either of the purposes mentioned in sub-paragraph (1).
- (4) The reference in sub-paragraph (1)(b) to a library, archive or museum is to a library, archive or museum which is not conducted for profit.
- (5) Where an institution makes a charge for supplying a copy to another library, archive or museum under sub-paragraph (1)(b), the sum charged must be calculated by reference to the costs attributable to the production of the copy.
- (6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

*Copying by librarians: single copies of published recordings*

- 6F. (1) A librarian of a library which is not conducted for profit may, if the conditions in sub-paragraph (2) are met, make and supply a single copy of a reasonable proportion of a published recording without infringing any of the rights in the recording conferred by this Chapter.
- (2) The conditions are—

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (a) the copy is supplied in response to a request from a person who has provided the librarian with a declaration in writing which includes the information set out in sub-paragraph (3), and
  - (b) the librarian is not aware that the declaration is false in a material particular.
- (3) The information which must be included in the declaration is—
- (a) the name of the person who requires the copy and the material which that person requires,
  - (b) a statement that the person has not previously been supplied with a copy of that material by any library,
  - (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person, and
  - (d) a statement that to the best of the person’s knowledge, no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person’s request, a request for substantially the same material for substantially the same purpose.
- (4) Where a library makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.
- (5) Where a person (“P”) makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—
- (a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and
  - (b) the copy supplied to P is to be treated as an illicit recording for all purposes.
- (6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

*Copying by librarians or archivists: single copies of unpublished recordings*

- 6G. (1) A librarian or archivist may make and supply a single copy of the whole or part of a recording without infringing any of the rights conferred by this Chapter in the recording, provided that—
- (a) the copy is supplied in response to a request from a person who has provided the librarian or archivist with a declaration in writing which includes the information set out in sub-paragraph (2), and
  - (b) the librarian or archivist is not aware that the declaration is false in a material particular.
- (2) The information which must be included in the declaration is—
- (a) the name of the person who requires the copy and the material which that person requires,
  - (b) a statement that the person has not previously been supplied with a copy of that material by any library or archive, and
  - (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (3) But the rights conferred by this Chapter are infringed if—
- (a) the recording had been published or communicated to the public before the date it was deposited in the library or archive, or
  - (b) the rights owner has prohibited the copying of the recording,
- and at the time of making the copy the librarian or archivist is, or ought to be, aware of that fact.
- (4) Where a library or archive makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.
- (5) Where a person (“P”) makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—
- (a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and
  - (b) the copy supplied to P is to be treated as an illicit recording for all purposes.

*Paragraphs 6B to 6G: interpretation*

- 6H. Expressions used in paragraphs 6B to 6G have the same meaning as in sections 40A to 43.]

*[<sup>F31</sup>Certain permitted uses of orphan works*

**Textual Amendments**

**F31** Sch. 2 para. 6I and cross-heading inserted (29.10.2014) by [The Copyright and Rights in Performances \(Certain Permitted Uses of Orphan Works\) Regulations 2014 \(S.I. 2014/2861\)](#), regs. 1, **3(4)**

- 6I. (1) The rights conferred by this Chapter are not infringed by a relevant body in the circumstances set out in paragraph 1(2) of Schedule ZA1 (subject to paragraph 6 of that Schedule).
- (2) “Relevant body” has the meaning given by that Schedule.]

*Copy of work required to be made as condition of export*

- 7 (1) If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by [<sup>F32</sup>this Chapter] to make that copy.
- (2) Expressions used in this paragraph have the same meaning as in section 44.

**Textual Amendments**

**F32** Words in Sch. 2 para. 7(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8 )

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

*Parliamentary and judicial proceedings*

- 8 (1) The rights conferred by [<sup>F33</sup>this Chapter] are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting such proceedings.
- (2) Expressions used in this paragraph have the same meaning as in section 45.

**Textual Amendments**

**F33** Words in Sch. 2 para. 8(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 9](#) (with [reg. 8](#) )

*Royal Commissions and statutory inquiries*

- 9 (1) The rights conferred by [<sup>F34</sup>this Chapter] are not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry or for the purpose of reporting any such proceedings held in public.
- (2) Expressions used in this paragraph have the same meaning as in section 46.

**Textual Amendments**

**F34** Words in Sch. 2 para. 9(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 9](#) (with [reg. 8](#) )

*Public records*

- 10 (1) Material which is comprised in public records within the meaning of the <sup>M1</sup>Public Records Act 1958, the <sup>M2</sup>Public Records (Scotland) Act 1937 or the <sup>M3</sup>Public Records Act (Northern Ireland) 1923 [<sup>F35</sup>, or in Welsh public records (as defined in [<sup>F36</sup>the Government of Wales Act 2006]), ] which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringing any right conferred by [<sup>F37</sup>this Chapter].
- (2) Expressions used in this paragraph have the same meaning as in section 49.

**Textual Amendments**

**F35** Words in Sch. 2 para. 10(1) inserted (1.4.1999) by [1998 c. 38](#) , [s. 125](#) , [Sch. 12 para. 29](#) (with [ss. 139\(2\)](#) , [143\(2\)](#) ); [S.I. 1999/782](#) , [art. 2](#)

**F36** Words in Sch. 2 para. 10(1) substituted by [Government of Wales Act 2006 \(c. 32\)](#) , [s. 160\(1\)](#) , [Sch. 10 para. 32](#) (with [Sch. 11 para. 22](#) ), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see [ss. 46](#) , [161\(1\)\(4\)\(5\)](#) of the amending Act.

**F37** Words in Sch. 2 para. 10(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 9](#) (with [reg. 8](#) )



*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

#### Marginal Citations

- M1** 1958 c. 51 .  
**M2** 1937 c. 43 .  
**M3** 1923 c. 20 (N.I.) .

#### *Acts done under statutory authority*

- 11 (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe the rights conferred by [<sup>F38</sup>this Chapter] .
- (2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies to an Act of Parliament.
- (3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.
- (4) Expressions used in this paragraph have the same meaning as in section 50.

#### Textual Amendments

- F38** Words in Sch. 2 para. 11(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , reg. 2 , [Sch. para. 9](#) (with reg. 8 )

#### *Transfer of copies of works in electronic form*

- 12 (1) This paragraph applies where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording.
- (2) If there are no express terms—
- (a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer, or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,
- anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by [<sup>F39</sup>this Chapter], but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.
- (3) The same applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.
- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in sub-paragraph (2) to the purchaser of references to the subsequent transferor.
- (5) This paragraph does not apply in relation to a recording purchased before the commencement of [<sup>F40</sup>this Chapter].

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

(6) Expressions used in this paragraph have the same meaning as in section 56.

#### Textual Amendments

- F39** Words in Sch. 2 para. 12(2) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 8](#) (with [reg. 8](#) )
- F40** Words in Sch. 2 para. 12(5) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 9](#) (with [reg. 8](#) )

#### *Use of recordings of spoken works in certain cases*

- 13 (1) Where a recording of the reading or recitation of a literary work is made for the purpose—
- (a) of reporting current events, or
  - (b) of [<sup>F41</sup>communicating to the public] the whole or part of the reading or recitation,
- it is not an infringement of the rights conferred by [<sup>F42</sup>this Chapter] to use the recording (or to copy the recording and use the copy) for that purpose, provided the following conditions are met.
- (2) The conditions are that—
- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast <sup>F43</sup> . . . ;
  - (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
  - (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
  - (d) the use is by or with the authority of a person who is lawfully in possession of the recording.
- (3) Expressions used in this paragraph have the same meaning as in section 58.

#### Textual Amendments

- F41** Words in Sch. 2 para. 12 substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , [reg. 2\(1\)](#) , [Sch. 1 para. 12\(b\)](#) (with [regs. 31-40](#) )
- F42** Words in Sch. 2 para. 13(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 9](#) (with [reg. 8](#) )
- F43** Words in Sch. 2 para. 13(2)(a) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , [reg. 2\(2\)](#) , [Sch. 2](#) (with [regs. 31-40](#) )

#### *Recordings of folksongs*

- 14 (1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a [<sup>F44</sup>body not established or conducted for profit] without infringing any of the rights conferred by [<sup>F45</sup>this Chapter] , provided the conditions in sub-paragraph (2) below are met.
- (2) The conditions are that—

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- (a) the words are unpublished and of unknown authorship at the time the recording is made,
  - (b) the making of the recording does not infringe any copyright, and
  - (c) its making is not prohibited by any performer.
- [<sup>F46</sup>(3) A single copy of a recording made in reliance on sub-paragraph (1) and included in an archive referred to in that sub-paragraph may be made and supplied by the archivist without infringing any right conferred by this Chapter, provided that—
- (a) the copy is supplied in response to a request from a person who has provided the archivist with a declaration in writing which includes the information set out in sub-paragraph (4), and
  - (b) the archivist is not aware that the declaration is false in a material particular.
- (4) The information which must be included in the declaration is—
- (a) the name of the person who requires the copy and the recording which is the subject of the request,
  - (b) a statement that the person has not previously been supplied with a copy of that recording by any archivist, and
  - (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.
- (5) Where an archive makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.
- (6) Where a person (“P”) makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—
- (a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and
  - (b) the copy supplied to P is to be treated as an illicit recording for all purposes.
- (7) In this paragraph references to an archivist include a person acting on behalf of an archivist.
- (8) Expressions used in this paragraph have the same meaning as in section 61.]

#### Textual Amendments

- F44** Words in Sch. 2 para. 14(1) substituted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), regs. 1, **7(3)**
- F45** Words in Sch. 2 para. 14(1)(3) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F46** Sch. 2 para. 14(3)-(8) substituted (1.6.2014) for Sch. 2 para. 14(3)(4) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), regs. 1, **7(4)**

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

<sup>F47</sup> [ *Lending of certain recordings* ]

**Textual Amendments**

**F47** Sch. 2 para. 14A and crossheading inserted (1.12.1996) by [S.I. 1996/2967](#) , [reg. 20\(3\)](#) (with [Pt. III](#) )

- <sup>F48</sup>14A(1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of films or sound recordings shall be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.
- (3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.
- (4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) Nothing in this section affects any liability under section 184(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.
- (6) Expressions used in this paragraph have the same meaning as in section 66.

**Textual Amendments**

**F48** Sch. 2 para. 14A inserted (1.12.1996) by [S.I. 1996/2967](#) , [reg. 20\(3\)](#) (with [Pt. III](#) )

*Playing of sound recordings for purposes of club, society, &c*

15 <sup>F49</sup> .....

**Textual Amendments**

**F49** Sch. 2 para. 15 omitted (1.1.2011) by virtue of [The Copyright, Designs and Patents Act 1988 \(Amendment\) Regulations 2010 \(S.I. 2010/2694\)](#) , [art. 3\(2\)](#)

*Incidental recording for purposes of broadcast* <sup>F50</sup> . . .

**Textual Amendments**

**F50** Words in heading preceding Sch. 2 para. 16 repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , [reg. 2\(2\)](#) , [Sch. 2](#) (with [regs. 31-40](#) )

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

- 16 (1) A person who proposes to broadcast a recording of a performance <sup>F51</sup> . . . in circumstances not infringing the rights conferred by [<sup>F52</sup>this Chapter] shall be treated as having consent for the purposes of [<sup>F53</sup>this Chapter] for the making of a further recording for the purposes of the broadcast <sup>F51</sup> . . . .
- (2) That consent is subject to the condition that the further recording—
- (a) shall not be used for any other purpose, and
  - (b) shall be destroyed within 28 days of being first used for broadcasting the performance <sup>F51</sup> . . . .
- (3) A recording made in accordance with this paragraph shall be treated as an illicit recording—
- (a) for the purposes of any use in breach of the condition mentioned in subparagraph (2)(a), and
  - (b) for all purposes after that condition or the condition mentioned in subparagraph (2)(b) is broken.
- (4) Expressions used in this paragraph have the same meaning as in section 68.

#### Textual Amendments

- F51** Words in Sch. 2 para. 16(1)(2)(b) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)
- F52** Words in Sch. 2 para. 16(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F53** Words in Sch. 2 para. 16(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 10** (with reg. 8)

#### *Recordings for purposes of supervision and control of broadcasts and [<sup>F54</sup>other services]*

#### Textual Amendments

- F54** Words in heading preceding Sch. 2 para. 17 substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 2(1)** (with regs. 31-40)

- 17 (1) The rights conferred by [<sup>F55</sup>this Chapter] are not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them [<sup>F56</sup>or included in any on-demand programme service provided by them], of recordings of those programmes.
- [<sup>F57</sup>(2) The rights conferred by [<sup>F55</sup>this Chapter] are not infringed by anything done in pursuance of—
- [<sup>F58</sup>(a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;]
  - (b) a condition which, [<sup>F59</sup>by virtue of section 334(1) of the Communications Act 2003 ], is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; <sup>F60</sup> . . .
  - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of [<sup>F61</sup>OFCOM] to require production of recordings etc ).

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

<sup>F62</sup>(d) [ section 334(3) [<sup>F63</sup>, 368O(1) or (3)] of the Communications Act 2003.]

<sup>F64</sup>(3) The rights conferred by [<sup>F55</sup> this Chapter ] are not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of—

- (a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
- (b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.]]

(4) In subsection (3), “existing material” means—

- (a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and
- (b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.

<sup>F65</sup>(5) Copyright is not infringed by the use by an appropriate regulatory authority designated under section 368B of the Communications Act 2003, in connection with the performance of any of their functions under that Act, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act.

(6) In this section “ on-demand programme service ” has the same meaning as in the Communications Act 2003 (see section 368A of that Act). ]

#### Textual Amendments

- F55** Words in Sch. 2 para. 17(1)(2)(3) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , [reg. 2](#) , [Sch. para. 9](#) (with [reg. 8](#) )
- F56** Words in Sch. 2 para. 17(1) inserted (19.12.2009) by [The Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#) , [reg. 12\(3\)\(a\)](#)
- F57** Sch. 2 para. 17(2)(3) substituted (1.10.1996 for certain purposes and 1.4.1997 otherwise) by 1996 c. 55 , s. 148(1) , [Sch. 10 Pt. III para. 32](#) (with s. 43(6) ); S.I. 1996/2120 , [art. 4\(1\)](#) , [Sch. 1](#) ; S.I. 1997/1005 , [art. 4](#)
- F58** Sch. 2 para. 17(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) , ss. 406 , 411 , [Sch. 17 para. 93\(2\)\(a\)](#) (with [Sch. 18](#) ); S.I. 2003/3142 , [art. 3](#) , [Sch. 1](#) (with [art. 11](#) )
- F59** Words in Sch. 2 para. 17(2)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) , ss. 406 , 411 , [Sch. 17 para. 93\(2\)\(b\)](#) (with [Sch. 18](#) ); S.I. 2003/3142 , [art. 3](#) , [Sch. 1](#) (with [art. 11](#) )
- F60** Word in Sch. 2 para. 17(2)(b) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) , ss. 406 , 411 , [Sch. 19\(1\)](#) (with [Sch. 18](#) , [Sch. 19\(1\) Note 1](#) ); S.I. 2003/3142 , [art. 3](#) , [Sch. 1](#) (with [art. 11](#) )
- F61** Word in Sch. 2 para. 17(2)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) , ss. 406 , 411 , [Sch. 17 para. 93\(2\)\(c\)](#) (with [Sch. 18](#) ); S.I. 2003/3142 , [art. 3](#) , [Sch. 1](#) (with [art. 11](#) )
- F62** Sch. 2 para. 17(2)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#) , ss. 406 , 411 , [Sch. 17 para. 93\(2\)\(d\)](#) (with [Sch. 18](#) ); S.I. 2003/3142 , [art. 3](#) , [Sch. 1](#) (with [art. 11](#) )
- F63** Words in Sch. 2 para. 17(2)(d) inserted (19.12.2009) by [The Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#) , [reg. 12\(3\)\(b\)](#)
- F64** Sch. 2 para. 17(3)(4) substituted (29.12.2003) for Sch. 2 para. 17(3) by [Communications Act 2003 \(c. 21\)](#) , ss. 406 , 411 , [Sch. 17 para. 93\(3\)](#) (with [Sch. 18](#) ); S.I. 2003/3142 , [art. 3](#) , [Sch. 1](#) (with [art. 11](#) )
- F65** Sch. 2 para. 17(5)(6) inserted (19.12.2009) by [The Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#) , [reg. 121\(3\)\(c\)](#)

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

- C3** Sch. 2 para. 17 modified (20.7.2004) [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#) , **art. 9(1)(3)** (with reg. 5 )

### *[<sup>F66</sup>Recording for the purposes of time-shifting*

#### **Textual Amendments**

- F66** Sch. 2 para. 17A and preceding heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , **reg. 19(3)** (with regs. 31-40)

- 17A (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by [<sup>F67</sup>this Chapter] in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—
- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any right conferred by [<sup>F67</sup>this Chapter] , it shall be treated as an illicit recording for all subsequent purposes.
- (3) In sub-paragraph (2), “ dealt with ” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meaning as in section 70.]

#### **Textual Amendments**

- F67** Words in Sch. 2 para. 17A(1)(2)(b) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , **reg. 2** , **Sch. para. 9** (with reg. 8 )

### *[<sup>F68</sup>Photographs of broadcasts*

#### **Textual Amendments**

- F68** Sch. 2 para. 17B and preceding heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , **reg. 20(2)** (with regs. 31-40)

- 17B (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by [<sup>F69</sup>this Chapter] in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—
- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any right conferred by [<sup>F69</sup>this Chapter] , it shall be treated as an illicit recording for all subsequent purposes.

*Status: Point in time view as at 31/07/2017.*

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(3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 71.]

#### Textual Amendments

**F69** Words in Sch. 2 para. 17B(1)(2)(b) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , reg. 2 , [Sch. para. 9](#) (with reg. 8 )

*Free public showing or playing of broadcast*<sup>F70</sup> . . .

#### Textual Amendments

**F70** Words in heading preceding Sch.2 para. 18 repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , reg. 2(2) , [Sch. 2](#) (with regs. 31-40 )

18 (1) The showing or playing in public of a broadcast<sup>F71</sup> . . . to an audience who have not paid for admission to the place where the broadcast<sup>F71</sup> . . . is to be seen or heard does not infringe any right conferred by [<sup>F72</sup>this Chapter] in relation to a performance or recording included in—

- (a) the broadcast<sup>F71</sup> . . . , or
- (b) any sound recording [<sup>F73</sup>(except so far as it is an excepted sound recording)] or film which is played or shown in public by reception of the broadcast<sup>F71</sup> . . . .

[<sup>F74</sup>(1A) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by [<sup>F72</sup>this Chapter] in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public—

- (a) <sup>F75</sup> . . . . .
- (b) is necessary for the purposes of—
  - (i) repairing equipment for the reception of broadcasts;
  - (ii) demonstrating that a repair to such equipment has been carried out; or
  - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.]

(2) The audience shall be treated as having paid for admission to a place—

- (a) if they have paid for admission to a place of which that place forms part; or
- (b) if goods or services are supplied at that place (or a place of which it forms part)—
  - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast<sup>F76</sup> . . . , or
  - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.



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- (3) The following shall not be regarded as having paid for admission to a place—
- (a) persons admitted as residents or inmates of the place;
  - (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts <sup>F76</sup>. . . is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast <sup>F76</sup>. . . was an infringement of the rights conferred by [<sup>F72</sup>this Chapter] in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast <sup>F76</sup>. . . shall be taken into account in assessing the damages for that infringement.
- (5) Expressions used in this paragraph have the same meaning as in section 72.

**Textual Amendments**

- F71** Words in Sch. 2 para. 18(1) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , reg. 2(2) , **Sch. 2** (with regs. 31-40 )
- F72** Words in Sch. 2 para. 18(1)(1A)(4) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) , reg. 2 , **Sch. para. 9** (with reg. 8 )
- F73** Words in Sch. 2 para. 18(1)(b) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , **reg. 21(2)(a)** (with regs. 31-40 )
- F74** Sch. 2 para. 18(1A) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , **reg. 21(2)(b)** (with regs. 31-40 )
- F75** Sch. 2 para. 18(1A)(a) omitted (1.1.2011) by virtue of [The Copyright, Designs and Patents Act 1988 \(Amendment\) Regulations 2010 \(S.I. 2010/2694\)](#) , **art. 4(2)**
- F76** Words in Sch. 2 para. 18(2)(b)(i)(3)(4) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#) , reg. 2(2) , **Sch. 2** (with regs. 31-40 )

*[<sup>F77</sup>Reception and re-transmission of [<sup>F78</sup>wireless broadcast by cable]]*

**Textual Amendments**

- F77** Crossheading substituted (1.10.1996) by [1996 c. 55](#) , s. 138 , **Sch. 9 para. 5** (with s. 43(6) ); [S.I. 1996/2120](#) , art. 4(1) , **Sch. 1**
- F78** Words in heading preceding Sch. 2 para. 19 substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I.2003/2498\)](#) , **reg. 22(3)(a)** (with regs. 31-40 )

<sup>F79</sup>19 . . . . .

**Textual Amendments**

- F79** Sch. 2 para. 19 repealed (31.7.2017) by [Digital Economy Act 2017 \(c. 30\)](#) , **ss. 34(1)(b)**, 118(6); [S.I. 2017/765](#), reg. 2(n)

<sup>F80</sup>19A . . . . .

*Status: Point in time view as at 31/07/2017.*

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#### Textual Amendments

**F80** Sch. 2 para. 19A repealed (31.7.2017) by Digital Economy Act 2017 (c. 30), ss. 34(1)(b), 118(6); S.I. 2017/765, reg. 2(n)

*Provision of sub-titled copies of broadcast<sup>F81</sup> . . .*

#### Textual Amendments

**F81** Words in heading preceding Sch. 2 para. 20 repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), Sch. 2 (with regs. 31-40)

<sup>F82</sup>20 . . . . .

#### Textual Amendments

**F82** Sch. 2 para. 20 repealed (1.6.2014) by The Copyright and Rights in Performances (Disability) Regulations 2014 (S.I. 2014/1384), reg. 1(1), Sch. para. 8 Table

*[<sup>F83</sup>Recording of broadcast for archival purposes*

#### Textual Amendments

**F83** Sch. 2 para. 21 substituted (1.6.2014) by The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 (S.I. 2014/1372), regs. 1, 8(2)

21. (1) A recording of a broadcast or a copy of such a recording may be made for the purpose of being placed in an archive maintained by a body which is not established or conducted for profit without infringing any right conferred by this Chapter in relation to a performance or recording included in the broadcast.
- (2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.
- (3) Expressions used in this paragraph have the same meaning as in section 75.]

**Status:**

Point in time view as at 31/07/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2.