
STATUTORY INSTRUMENTS

2016 No. 221

The Collective Management of Copyright
(EU Directive) Regulations 2016

PART 4

Dispute Resolution and Enforcement

Complaints procedure

31.—(1) A collective management organisation must make available to—

- (a) its members,
- (b) right holders who are not its members but who have a direct legal relationship with it by law or by way of assignment, licence or other contractual arrangement,
- (c) collective management organisations on whose behalf it manages rights under representation agreement, and
- (d) users,

effective and timely procedures for dealing with complaints.

(2) The matters covered by the procedures for dealing with complaints referred to in paragraph (1) relate in particular to—

- (a) authorisation to manage rights;
- (b) termination or withdrawal of rights;
- (c) membership terms;
- (d) the collection of amounts due to right holders;
- (e) deductions and distributions; and
- (f) the service provided.

(3) A collective management organisation must—

- (a) respond in writing to complaints; and
- (b) give reasons where it rejects a complaint.

(4) Paragraph (1)(d) does not apply where the collective management organisation is a business with fewer than ten employees and which has a turnover or balance sheet of less than 2 million euros per annum.

Alternative dispute resolution procedures

32.—(1) A collective management organisation must ensure that disputes to which—

- (a) paragraph (2) applies, or
- (b) paragraph (3) applies,

can be submitted to an independent and impartial alternative dispute resolution procedure.

(2) This paragraph applies to disputes between a collective management organisation and one of its members, a right holder, a user or another collective management organisation concerning compliance with these Regulations other than—

- (a) a dispute to which paragraph (3) applies; or
- (b) a dispute concerning paragraph (4)(b) of regulation 15 (tariffs).

(3) This paragraph applies to disputes between a collective management organisation to which Part 3 of these Regulations applies which grants or offers to grant multi-territorial licences for online rights in musical works with—

- (a) an actual or potential online service provider regarding compliance with regulations 15 (licensing), 24 (transparency), 25 (accuracy of multi-territorial repertoire information) and 26 (reporting and invoicing);
- (b) a right holder regarding compliance with regulations 24, 25, 26, 27 (payment to right holders), 28 (agreements between collective management organisations), 29 (representation of other collective management organisations) and 30 (access to multi-territorial licensing); and
- (c) another collective management organisation regarding compliance with regulations 24, 25, 26, 27, 28 and 29.

(4) Paragraph (1)(a) does not apply where the collective management organisation is a business with fewer than ten employees and which has a turnover or balance sheet of less than 2 million euros per annum.

Right of right holders in relation to a breach of regulation 4

33.—(1) The obligation of a collective management organisation to comply with regulation 4 (particular obligations of collective management organisations to right holders) is a duty owed to any right holder who may be affected by the contravention of that regulation.

(2) Where a duty is owed by virtue of paragraph (1) to a right holder, a breach of that duty which causes that right holder to sustain loss or damage shall be actionable by the right holder.

Monitoring of compliance

34. The Secretary of State must monitor compliance with these Regulations.

Evidence of non-compliance

35. The Secretary of State must have regard to evidence which is notified to the Secretary of State of activities or circumstances which may constitute a breach of these Regulations.

Power to request information

36.—(1) The Secretary of State may give notice to—

- (a) a collective management organisation,
- (b) a member,
- (c) a right holder or a body representing the interests of right holders,
- (d) a user or a body representing the interests of users,
- (e) an entity to which a provision of these Regulations applies under paragraph (4) of regulation 2 (interpretation and application), or
- (f) an independent management entity,

requiring it to supply to the Secretary of State such information or document as may be specified or described in the notice for the purpose of ascertaining whether these Regulations have been complied with.

(2) The notice may require the person to whom it is given to supply the information or document referred to in paragraph (1) at a time and a place and in a form and manner which is specified.

(3) The person to whom the notice is given shall supply to the Secretary of State the information or document which is specified or described in the notice under paragraph (1) in accordance with what is specified under paragraph (2).

(4) The Secretary of State may, for the purpose described in paragraph (1), copy any document or information provided.

(5) Nothing in this regulation gives the Secretary of State any power to require a person to supply any information or document which the person would be entitled to refuse to supply in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(6) In paragraph (5) “communications” means—

- (a) communications between a professional legal adviser and the adviser’s client; or
- (b) communications made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

(7) Nothing in this regulation shall be construed as requiring a person to provide information if to do so might incriminate that person.

(8) A reference in this regulation to the supply of a document is a reference to the supply of a legible and intelligible copy of information recorded otherwise than in legible form.

Compliance notice

37.—(1) Where the Secretary of State thinks that—

- (a) a collective management organisation,
- (b) a member,
- (c) a right holder or a body representing the interests of right holders,
- (d) a user or a body representing the interests of users,
- (e) an entity to which a provision of these Regulations applies under paragraph (4) of regulation 2, or
- (f) an independent management entity,

has failed to comply with its obligations under Part 2 or 3 of these Regulations or under regulation 31 (complaints procedure), 32 (alternative dispute resolution procedures) or 36 (information) the Secretary of State may give a notice (“a compliance notice”) to that person.

(2) A compliance notice must be in writing and must—

- (a) state that the Secretary of State thinks that the person has not complied with a provision of these Regulations;
- (b) specify the provision in question and state the acts or omissions which the Secretary of State thinks contravene that provision;
- (c) request the person, where non-compliance with the provision is continuing,—
 - (i) to end the non-compliance within such time as the notice may specify;
 - (ii) to provide such evidence within that period to the satisfaction of the Secretary of State that the non-compliance has ended;

- (d) if the Secretary of State thinks fit, request the person to provide a written undertaking in a form which is satisfactory to the Secretary of State, that non-compliance with the provision will not be repeated; and
- (e) warn the person that if—
 - (i) the person does not comply with the compliance notice, or
 - (ii) the person fails to comply with a written undertaking provided in respect of the compliance notice,

further action may be taken under these Regulations.

(3) The Secretary of State may rescind a compliance notice given to a person under paragraph (1) and where doing so must give the person notice of the rescission.

(4) Where a compliance notice has been given in relation to a failure to comply with these Regulations no action to impose a penalty under regulation 38 (financial penalties) may be taken in relation to that failure unless the person to whom it has been given has failed—

- (a) to comply with the compliance notice; or
- (b) to comply with a written undertaking provided in respect of a compliance notice.

Financial penalties for non-compliance

38.—(1) The Secretary of State may impose a financial penalty on—

- (a) a collective management organisation,
- (b) a member,
- (c) a right holder or a body representing the interests of right holders,
- (d) a user or a body representing the interests of users,
- (e) an entity to which a provision of these Regulations applies under paragraph (4) of regulation 2, or
- (f) an independent management entity,

if the Secretary of State is satisfied that the person referred to in paragraph (1)(a) to (f) has failed to comply with its obligations under Part 2 or 3 of these Regulations or regulation 31, 32 or 36.

(2) If the Secretary of State may impose a financial penalty on a collective management organisation under paragraph (1) the Secretary of State may instead impose a financial penalty on a director, manager or similar officer of that collective management organisation or, where the organisation's affairs are managed by its members, a member.

(3) The amount of the financial penalty must be such amount as the Secretary of State considers appropriate.

(4) In deciding what amount is appropriate the Secretary of State must have regard to the nature of the failure of compliance.

(5) A financial penalty may comprise of either—

- (a) a sum not exceeding £50,000; or
- (b) a sum not exceeding £5,000 together with a sum not exceeding £500 for each day that the person referred to in paragraph (1) continues to fail to comply with its obligations under these Regulations not exceeding in total £50,000.

(6) A financial penalty is payable to the Secretary of State.

Financial penalties: procedure

39.—(1) As soon as practicable after imposing a financial penalty, the Secretary of State must give notice of the financial penalty to the person on whom it is imposed.

(2) The notice must state—

- (a) that the Secretary of State has imposed a financial penalty;
- (b) the amount of the financial penalty;
- (c) the acts or omissions which the Secretary of State considers contravene the Regulations;
- (d) the provisions of these Regulation which the Secretary of State considers are contravened;
- (e) any other facts which the Secretary of State considers justify the imposition of a financial penalty;
- (f) the period (not less than 28 days from the date the notice is received by the person) within which the financial penalty is to be paid.

(3) The Secretary of State may rescind a penalty which has been imposed on a person under regulation 38 (financial penalties) and where doing so must give the person notice of the rescission.

Appeals

40.—(1) If a person on whom a financial penalty is imposed is aggrieved by the imposition or the amount of a financial penalty, the person may appeal to the First-tier Tribunal.

(2) On an appeal under this regulation, the First-tier Tribunal may make such order as it considers appropriate.

(3) In this regulation “First-tier Tribunal” means the First-tier Tribunal established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007⁽¹⁾.

Recovery of a financial penalty

41.—(1) Where a financial penalty, or any portion of it, has not been paid by the time which it is required to be paid and paragraph (2) applies the Secretary of State may recover from the person on whom the penalty is imposed any of the penalty which has not been paid as a debt due to the Secretary of State.

(2) This paragraph applies where—

- (a) no appeal relating to the penalty has been made under regulation 40; or
- (b) an appeal has been made under that regulation and that appeal has been determined, withdrawn or otherwise dealt with.

Notices

42.—(1) Where a notice is to be given under these Regulations, it may be given—

- (a) by being delivered personally to a person;
- (b) by being sent to the proper address of the person—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000⁽²⁾); or
 - (ii) by a postal service which provides for the delivery of the document to be recorded;

(1) 2007 c.15.

(2) 2000 c.26.

- (c) by being sent to the person using electronic communications to that person’s last known electronic address.
- (2) For the purpose of paragraph (1)(b) the proper address of a person is—
 - (a) in the case of a body corporate, the address of the registered office or principal office of the body,
 - (b) in the case of a partnership, the address of the principal office of the partnership,
 - (c) in any other case, the last known address of that person.
- (3) Where a notice has been given as mentioned in paragraph (1)(b) or (c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

Computation of time

43.—(1) If the time specified in these Regulations for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(2) In this regulation “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom under section 1 of the Banking and Financial Dealings Act 1971(3).