

Copyright in Sound Recordings and Performers' Rights (Term Extension) Bill

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B I L L

TO

Extend the duration of copyright in sound recordings and of performers' rights; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

AMENDMENT OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

1 Introductory

- (1) References in this Act to “commencement”, without more, are to the date on which this Act comes into force. 5
- (2) In this Act—
“the 1988 Act” means the Copyright, Designs and Patents Act 1988 (c. 48);
“the 1988 provisions” means the provisions of that Act as on the day prior to commencement and the savings and transitional provisions contained in Part III of the Duration of Copyright and Rights in Performances Regulations 1995 (S.I. 1995/3297), Part III of the Copyright and Related Rights Regulations 1996 (S.I. 1996/2967) and Part 3 of the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498); 10
“the new provisions” means the provisions of that Act as amended by this Act. 15
- (3) Expressions used in this Act which are defined for the purposes of Part I or Part II of the 1988 Act, in particular references to the copyright owner, have the same meaning as in those Parts.

2 Extension of duration of copyright and performers' rights 20

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.

(2) In section 13A(2) (duration of copyright in sound recordings) substitute “95 years” for “50 years” in paragraphs (a), (b) and (c).

(3) In section 191 (duration of rights), for subsection (2) substitute –

“(2) The rights conferred in relation to a performance expire at the end of the period of 95 years from the end of the calendar year in which the performance takes place or, if during that period a recording of the performance is released, 95 years from the end of the calendar year in which it is released, subject to subsections (3) to (5) below.”

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PART 2

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COPYRIGHT IN SOUND RECORDINGS

3 **Duration of copyright in sound recordings: general saving**

Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 1988 provisions if that date is later than the date on which copyright would expire under the new provisions.

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4 **Copyright in sound recordings: interpretation**

(1) In the provisions of this Part relating to copyright –

(a) “existing”, in relation to a sound recording, means made before commencement, and

(b) “existing copyright work” means a sound recording in which copyright subsisted immediately before commencement.

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(2) For the purposes of those provisions a sound recording of which the making extended over a period shall be taken to have been made when its making was completed.

5 **Duration of copyright in sound recordings: application of new provisions**

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The new provisions relating to duration of copyright in sound recordings apply –

(a) to copyright works made after commencement,

(b) to existing sound recordings which first qualify for copyright protection after commencement, and

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(c) to existing copyright works, subject to section 4,

and nothing in this Act shall operate to revive copyright in an existing sound recording in which the copyright has at the date of commencement expired under the 1988 provisions or any earlier enactment relating to copyright.

6 **Extended copyright: meaning**

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In the following provisions of this Act, “extended copyright” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 1988 provisions.

7 Ownership of extended copyright in sound recordings

- (1) The person who is the owner of the copyright in a sound recording immediately before commencement is as from commencement the owner of any extended copyright in that sound recording, subject as follows.
- (2) If he is entitled to copyright for a period of less than the whole of the copyright period under the 1988 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period. 5

8 Prospective ownership of extended copyright in sound recordings

- (1) Where by an agreement made before commencement in relation to extended copyright in a sound recording, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended copyright (wholly or partially) to another person, then, if on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this section. 10
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- (2) A licence granted by a prospective owner of extended copyright in a sound recording is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser and references in Part I of the 1988 Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly. 20
- (3) In subsection (2) “prospective owner” includes a person who is prospectively entitled to extended copyright by virtue of such an agreement as is mentioned in subsection (1). 25

9 Extended copyright in sound recordings: existing licences, agreement etc.

- (1) Any copyright licence or any term or condition of any agreement relating to the exploitation of a copyright work which—
 - (a) subsists immediately before commencement in relation to an existing copyright work, and 30
 - (b) is not to expire before the end of the copyright period under the 1988 provisions,shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary. 35
- (2) Any copyright licence, or term or condition of any agreement relating to the exploitation of a copyright work, imposed by order of the Copyright Tribunal which—
 - (a) subsists immediately before commencement in relation to an existing copyright work, and 40
 - (b) is not to expire before the end of the copyright period under the 1988 provisions,shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

PART 3

PERFORMERS' RIGHTS

10 Performers' rights: interpretation

- (1) In the provisions of this Part relating to performers' rights –
- (a) “existing”, in relation to a performance, means given before commencement, and 5
 - (b) “existing protected performance” means a performance in relation to which performers' rights under Part II of the 1988 Act subsisted immediately before commencement.
- (2) References in this Part to performers' rights are to – 10
- (a) the economic rights referred to in section 180(1)(a) and conferred by sections 181 to 184 of the 1988 Act, and
 - (b) the moral rights referred to in section 180(1A) and conferred by sections 205C and 205F of the 1988 Act.
- (3) References in this Part to a performer's property rights are to – 15
- (a) those rights referred to in section 191A(1) of the 1988 Act, and
 - (b) for the purposes of this Part to the right conferred by section 182D of the 1988 Act.
- (4) References in this Part to a performer's non-property rights are to those rights referred to in section 192A(1) of the 1988 Act. 20

11 Duration of performers' rights: general saving

Any performers' 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. 25

12 Duration of performers' rights: application of new provisions

The new provisions relating to the duration of performers' 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, and 30
- (c) to existing protected performances, subject to section 11,

and nothing in this Act shall operate to revive any performers' rights in an existing performance in which the performers' rights have at the date of commencement expired under the 1988 provisions or any earlier enactment relating to the protection of performers. 35

13 Extended performers' rights: meaning

In the following provisions of this Part “extended performers' rights” means performers' 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. 40

14 Entitlement to extended performers' rights

- (1) Any extended performers' rights are exercisable as from commencement by the person who was entitled to exercise those rights immediately before commencement, namely –
 - (a) in the case of any right forming part of a performer's non-property rights, the performer or, if he has died, the person entitled by virtue of section 192A(2) of the 1988 Act to exercise those rights, 5
 - (b) in the case of any right forming part of a performer's property rights, the owner of such right immediately before commencement, and
 - (c) in the case of a performer's moral rights, the performer or, if he has died, the person entitled by virtue of section 205M of the 1988 Act to exercise those rights. 10
- (2) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by subsection (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death. 15
- (3) If the owner of a performer's property rights is entitled immediately before commencement to those rights for a period of less than the whole of the performers' rights period under the 1988 provisions, any extended performers' property rights are part of the reversionary interest expectant on the termination of that period. 20

15 Prospective ownership of extended performers' property rights

- (1) Where by an agreement made before commencement in relation to a performer's extended property rights, and signed by or on behalf of the prospective owner of the rights, the prospective owner purports to assign the performer's extended property rights (wholly or partially) to another person, then, if on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, the rights shall vest in the assignee or his successor in title by virtue of this section. 25
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- (2) A licence granted by a prospective owner of a performer's extended property rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser and references in Part I of the 1988 Act to doing anything with, or without, the licence of the rights owner shall be construed accordingly. 35
- (3) In subsection (2) "prospective owner" in relation to a performer's extended property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1). 40

16 Extended performers' rights: existing consents, agreement etc.

- (1) 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 performers' rights under Part II of the 1988 Act subsist in relation to that performance, 45

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

- (2) Any licence of a performer's property rights, or term or condition of any agreement relating to the exploitation of a performer's property rights imposed by order of the Copyright Tribunal which – 5
- (a) subsists immediately before commencement in relation to an existing protected performance, and
 - (b) is not to expire before the end of the performers' rights period under the 1988 provisions,
- shall continue to have effect during the period of any extended performers' rights, subject to any further order of the Tribunal. 10

PART 4

FINAL PROVISIONS

17 Citation, commencement and extent

- (1) This Act may be cited as the Copyright in Sound Recordings and Performers' Rights (Term Extension) Act 2008. 15
- (2) This Act comes into force three months after the date on which it is passed.
- (3) This Act applies to England, Wales, Scotland and Northern Ireland.

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B I L L

To extend the duration of copyright in sound recordings and of performers' rights; and for connected purposes.

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supported by
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