



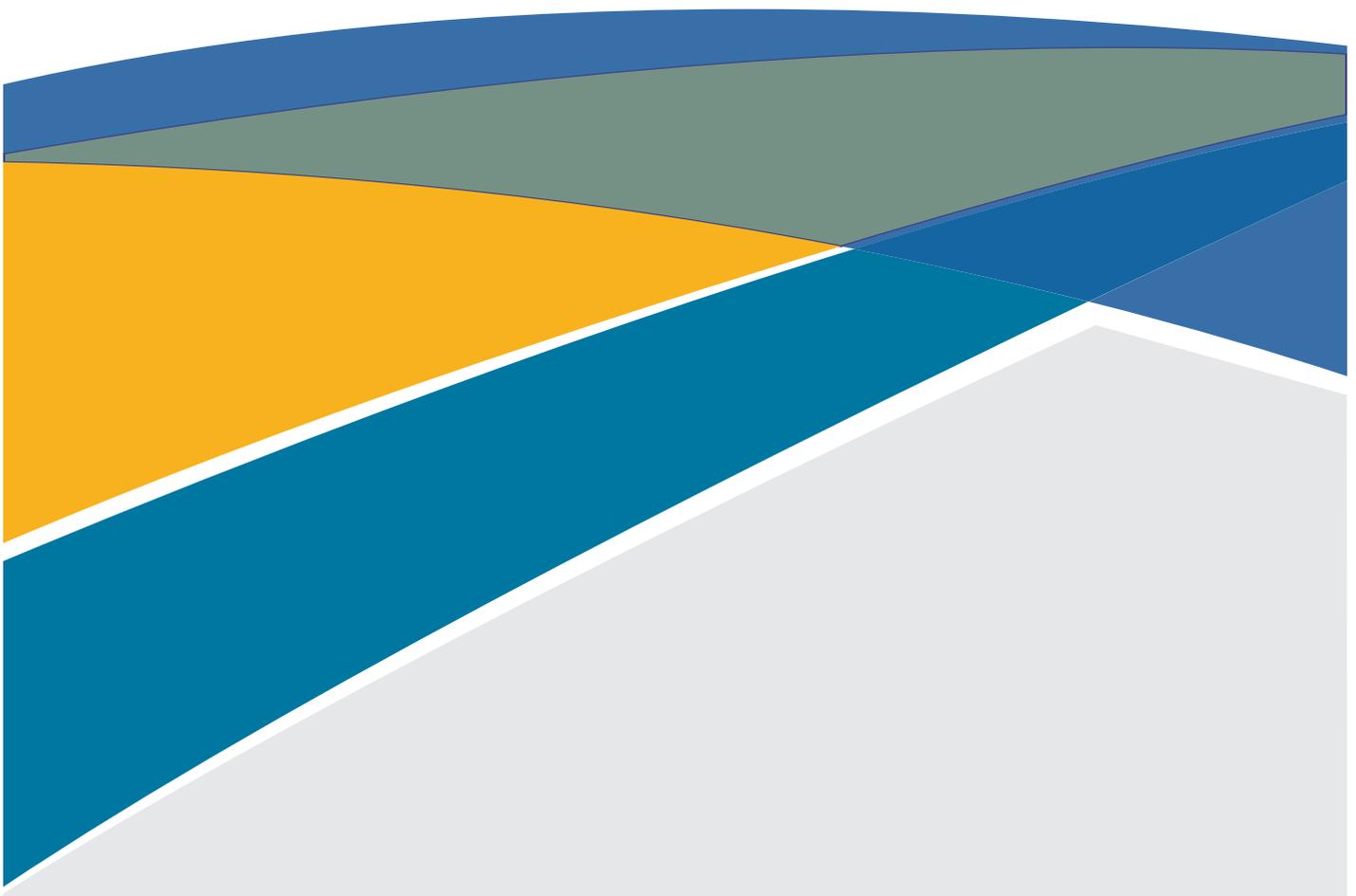
Intellectual
Property
Office



Department
for Business
Innovation & Skills

Secretary of State's Guidance on the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014

April 2014: Version 1



Contents

| | |
|---|----|
| Introduction | 1 |
| Intended Audience..... | 1 |
| Stakeholder involvement..... | 1 |
| Relevance to future developments | 2 |
| Regional coverage | 3 |
| Purpose and legal status | 3 |
| Regulatory Background | 3 |
| Publishing a notice and/or imposition of a statutory code of practice..... | 4 |
| Effect of a Direction | 5 |
| Imposition of a Code of Practice | 5 |
| Appointment of a statutory Code Reviewer | 6 |
| Appointment of a Licensing Code Ombudsman | 7 |
| Recovery of Fees by the Secretary of State..... | 8 |
| Secretary of State’s Power to Request Information | 8 |
| Financial penalties | 8 |
| Imposition of a Financial Penalty: main procedural requirements..... | 9 |
| Appeals..... | 9 |
| Links and further information | 10 |
| Appendix I..... | 11 |
| Appendix II..... | 12 |
| Appendix III..... | 13 |
| Appendix IV | 14 |

Introduction

The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014 (the ‘Regulations’) are made under the powers in section 116(5) of and Schedule A1 to the Copyright, Designs and Patents Act 1988 which were inserted by the Enterprise and Regulatory Reform Act 2013.¹ The Regulations will come into force on 6th April 2014.

These guidance notes have been produced by the Intellectual Property Office (IPO) to help UK collecting societies (i.e. the “relevant licensing bodies” in the Regulations) understand how to comply with the Regulations. They explain the circumstances in which they apply, who is in scope, and how this might change when European legislation on the regulation of collecting societies is introduced in 2016.

Intended Audience

The target audience for these guidance notes is the “relevant licensing bodies”: those licensing bodies which are member owned or controlled and operate on a not-for-profit basis.² They are commonly referred to as “collecting societies” and will be referred to as such in this guidance.

A collecting society is a subset of the wider term “licensing body” as defined in section 116(2) of the Copyright, Designs and Patents Act 1988 (CDPA).³ Therefore the term “relevant licensing bodies” is used to describe the organisations to which the Regulations will apply.

Licensees, potential licensees and rights holders are also likely to have an interest in ensuring that those issuing licences are compliant with the law.

Stakeholder involvement

The issues highlighted in the guidance reflect those raised by stakeholders during consultation throughout the development of the Regulations, including:

- a Codes Working Group of collecting society, licensee, user and Government representatives;

1 <http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>

2 The Regulations define ‘relevant licensing body’ as: “any body that is a licensing body within the meaning of section 116(2) of the Act and which:
(a) is authorised by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rights holder, for the collective benefit of those rights holders, as its sole or main purpose; and
(b) is either owned or controlled by its members or organised on a not for profit basis.”

3 Section 116(2) defines a ‘licensing body’ as:
“In this Chapter a “licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.”

- The British Copyright Council (BCC), the trade body responsible for developing a self-regulatory framework for its collecting society members; and
- Responses submitted to the formal consultation process.⁴

Relevance to future developments

The UK's policy development for codes of practice began against the backdrop of a possible European Directive to regulate EU collecting societies. This had been under discussion in Europe for several years, including the Commission's non-binding Recommendation in 2005, a public hearing in 2010, followed by further consultation before the Collective Rights Management Directive was finally published in July 2012.⁵

By this time, domestic policy development was well advanced and as there was still no guarantee that the CRM Directive would be agreed, and therefore the potential for a lengthy gap before transposition, the Government decided to press ahead. This was to ensure that licensees and members in the UK would benefit from having certain minimum standards in place, making the UK better placed to influence the outcome of the CRM Directive.

The negotiations on the Directive have now concluded, the dossier having been formally approved by the European Parliament and the Council in February 2014. The Directive was published in the Official Journal of the European Union (OJEU) on 20 March 2014⁶ and the UK has until 10 April 2016 to transpose it into UK law. These Regulations will therefore be reviewed as part of that process and this guidance will be updated if appropriate.

These Regulations also pave the way for the implementation of secondary legislation to allow UK extended collective licensing (ECL) schemes, which is planned for October 2014. An ECL scheme is one under which a collecting society, subject to certain safeguards, is authorised to license specified copyright works on behalf of all rights holders in its sector, and not just those from whom it has specific permission to act. Collecting societies that operate ECL schemes are given enhanced powers (in being able to manage the rights of non-member rights holders), so the adoption of a code of practice, designed to protect rights holders, is a prerequisite.

4 <http://www.ipo.gov.uk/pro-policy/consult/consult-closed/consult-closed-2013/consult-2013-collecting.htm>

5 Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, (the "CRM Directive") published in July 2012. http://ec.europa.eu/internal_market/copyright/management/index_en.htm

6 Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.084.01.0072.01.ENG

Regional coverage

This guidance applies to businesses in England and Wales, Scotland and Northern Ireland. It does not apply to the Channel Islands or the Isle of Man.

Purpose and legal status

This guidance provides advice on complying with the Regulations. These set out the statutory framework under which the Secretary of State may act if a collecting society does not have a self-regulatory code of practice or where it has one which does not materially comply with the “specified criteria” in the Regulations. These Regulations are intended to underpin a system of self-regulation by UK collecting societies, and can be invoked to deal with any gaps that may emerge in the self-regulatory framework. The Regulations also empower the Secretary of State to take action, including imposing financial penalties.

Regulatory Background

In May 2011 the Hargreaves Review recommended that collecting societies “*should be required by law to adopt codes of practice, approved by the IPO and the UK competition authorities, to ensure that they operate in a way that is consistent with the further development of efficient, open markets.*”⁷ This was broadly accepted by the Government and was the subject of a full public consultation, which ended in March 2012.⁸ Following this, the Government published a policy statement in July 2012, stating its intention to bring forward legislation to regulate collecting societies.⁹ In April 2013, the Government took a power in the Enterprise and Regulatory Reform Act that would allow it to make secondary legislation to remedy and, where warranted, penalise gaps in self-regulation by collecting societies.

In 2012 the IPO consulted on and published on its website a set of minimum standards for the collecting societies to use as a basis for self-regulatory codes of practice.¹⁰

In the first instance, it is intended that UK collecting societies self-regulate, using codes of practice that comply with minimum standards, developed in conjunction with the sector, but set by the Government. The majority of collecting societies have already adopted self-regulatory codes of practice, most under the umbrella of their trade body, the British Copyright Council.¹¹ These codes are subject to review by the industry-appointed independent code reviewer; the inaugural review will report back in May 2014.

7 <http://www.ipo.gov.uk/ipreview>

8 <http://www.ipo.gov.uk/consult-2011-copyright.pdf>

9 Government Policy Statement: Consultation on Modernising Copyright, July 2012, p.12 <http://www.ipo.gov.uk/response-2011-copyright.pdf>

10 <http://www.ipo.gov.uk/hargreaves-minimumstandards.pdf>

11 <http://www.britishcopyright.org/page/350/british-copyright-council-launches-principles-for-collective-management-organisations-codes-of-conduct/>

Publishing a notice and/or imposition of a statutory code of practice

This section describes what actions are available to the Secretary of State and what processes he must follow if he forms the opinion that a collecting society, which is not a micro-business, either does not have a code of practice at all, or that it has one which does not comply in material respects, with the specified criteria in the Schedule to the Regulations. The “specified criteria” are based closely upon the “minimum standards” that form the basis of self regulation of a collecting society.

If a collecting society has no code of practice in place the Secretary of State may direct the collecting society to adopt and publish a code of practice that complies with the specified criteria.

Where the Secretary of State finds that a collecting society’s code of practice does not comply in material respects with the specified criteria he will notify the collecting society. Once notified the collecting society in question will have 49 days to make the necessary modifications. In addition to notifying the collecting society the Secretary of State will also publish the notice so that the matter comes to the attention of others with an interest (for example licensees and members). This notice gives the collecting society the opportunity to close any gaps without statutory intervention. The element of publicity is also intended to have a deterrent effect against future breaches.

The 49 day time period ensures there is sufficient time for a collecting society to revise its code while ensuring that members and licensees are protected from any shortfalls in the existing code for too long a period of time. Where the time period specified ends on a non-working day (for example a Sunday or Bank Holiday), the response would be in time if it were received on the next working day.

If the collecting society in question has not modified its code of practice after 49 days the Secretary of State may direct it to adopt and publish a code of practice that complies with the specified criteria.

A flowchart describing the process is available at Appendix I.

Any breach of a code must be “material”. The Secretary of State has the option to ask the code reviewer for an independent opinion, before deciding whether or not a breach is material.

Effect of a Direction

First, the Secretary of State directs a collecting society to adopt and publish a compliant code of practice. Second, the collecting society will be given 49 days (for the reasons outlined above) to submit its proposed code to him.

Once the collecting society has submitted the proposed code to the Secretary of State, he will review it against the specified criteria.

Once he has done so, he may either accept it as compliant or impose a full statutory code on the collecting society in question. Given the need to establish a level playing field for compliance as soon as possible, once a code or part of a code has been approved or imposed, a collecting society will have 7 days to adopt and publish it.

Imposition of a Code of Practice

The Secretary of State may only impose a code of practice if the collecting society:

- (i) Has failed to adopt a code of practice.
- (ii) Has adopted a code of practice which does not meet the specified criteria.

If the Secretary of State decides to impose a code on a collecting society, he must take the following procedural steps:

- (i) Give notice to the collecting society of the code to be imposed on it including: the reasons for his decision, the contents of the code he intends to impose, and the time period allowed for making representations (at least 14 days).
- (ii) Consider any representations made by the collecting society in relation to the notice of imposition.

Once a code has been imposed, the collecting society must operate in accordance with it from the date notified to it by the Secretary of State (the effective date).

Appointment of a statutory Code Reviewer

As part of their self-regulatory structure, UK collecting societies, in association with the British Copyright Council, have appointed an independent code reviewer.¹² The reviewer's role is to ensure that the BCC Principles for best practice¹³ remain fit for purpose, including with regards to the Government's minimum standards; and that individual codes are compliant with the self-regulatory framework.

Notwithstanding the Government's preference for the industry to self-regulate, the Regulations include a statutory power, to be used only if needed, which would enable the Secretary of State to appoint a statutory code reviewer to review and report on industry codes of practice.

The circumstances in which this power would most likely be exercised include:

- where an individual collecting society (or several collecting societies) had either failed to appoint a Code Reviewer or to refer its code to the existing independent code review scheme; or
- if there were a systemic problem with the industry appointed Independent Code Reviewer (e.g. the Independent Code Reviewer had been brought into disrepute), rendering it untenable for that Reviewer to continue in the role.

The Secretary of State is required to consult with those who are likely to be affected by his decision before he appoints a Code Reviewer. Once appointed, the Code Reviewer would have powers to request, and be supplied with, information that he or she needs. There is provision in the Regulations for the Secretary of State to pay his or her reasonable costs.

A flowchart detailing the process of appointing a self regulatory or statutory Code Reviewer is at Appendix II.

¹² <http://www.independentcodereview.org.uk/>

¹³ <http://www.britishcopyright.org/page/276/principles-of-collective-management-organisations-codes-of-conduct/>

Appointment of a Licensing Code Ombudsman

In certain circumstances the Secretary of State has the power to appoint a statutory Ombudsman to resolve disputes between collecting societies and their members, or their licensees. He is most likely to exercise this power where an individual collecting society failed to join the existing independent Ombudsman scheme. It may also be necessary to make an appointment should there be a systemic problem with the industry appointed, self-regulatory scheme.¹⁴ Before making an appointment, the Secretary of State would need to be satisfied that an organisation or individual was suitably qualified for the role.

The statutory Ombudsman would consider all relevant indicators of the collecting society's failure to comply with its code of practice, for example, complaints about:

- incorrect charges made in connection with the granting of a licence (but not the licence fees themselves as such complaints fall within the scope of the Copyright Tribunal);
- behaviour (e.g. not acting fairly, honestly, reasonably, impartially, courteously, as required in its code)
- unreasonable delays or failure to take specific actions;
- unfair or discriminatory treatment; or
- providing incorrect or misleading information.

The role of the Ombudsman would be to resolve such disputes where the internal complaints procedure of a collecting society had failed to do so. The Ombudsman will need access to all the relevant documents and information needed to properly consider the case and will be empowered to request and be supplied with information. This is slightly narrower than the Code Reviewer's power as it is confined to the investigation of specific disputes. There is also no obligation on the Secretary of State to consult with interested parties before making the appointment, as is the case for the appointment of the Independent Code Reviewer.

Once the Ombudsman has concluded the investigation, he will make a determination (this is consistent with the operation of all ombudsman schemes) – for example requiring that the collecting society takes specific action to remedy the situation or circumstances that gave rise to the complaint. This might involve apologising to the complainant, giving compensation or taking other practical action. If a collecting society fails to comply, the Secretary of State may impose financial penalties on the collecting society concerned.

¹⁴ <http://www.ombudsman-services.org/copyright.html>

A flowchart detailing the process of appointing a licensing code Ombudsman is available at Appendix III.

Recovery of Fees by the Secretary of State

The Secretary of State has the power to recoup any costs related to the administration of the Regulations from the collecting societies concerned. These could relate to, for example, the costs of serving notices or appointing an ombudsman or a code reviewer. Once the collecting society in question has been notified of the fee, it will have 24 days in which to make payment.

Secretary of State's Power to Request Information

This section gives the Secretary of State powers to request any information from a collecting society that relates to its licensing activities. The collecting society must supply this information within 14 days once notice of such a request has been served on it.

Financial penalties

Where a collecting society fails to comply with a direction from the Secretary of State or with requests to provide information to the statutory Code Reviewer and/or Ombudsman, the Secretary of State may impose financial penalties on the collecting society as an entity or if appropriate on a "relevant person." The term "relevant person" is defined in the Regulations to help ensure that financial penalties in particular are levied on the most appropriate person.¹⁵ The financial penalty is capped at £50,000.

¹⁵ "relevant person" means a director, manager or similar officer of a relevant licensing body or, where the body's affairs are managed by its members, a member

Imposition of a Financial Penalty: main procedural requirements

This section sets out the procedures that the Secretary of State must follow if he decides to impose a financial penalty. He is under an obligation to give notice of the penalty to the collecting society or person that he is fining. The purpose of the notice is to set out the amount of the penalty, what contravention the Secretary of State is penalising and by when payment must be made before a financial penalty can be imposed.

A flowchart describing this process is available at Appendix IV.

Appeals

If a collecting society is dissatisfied about:

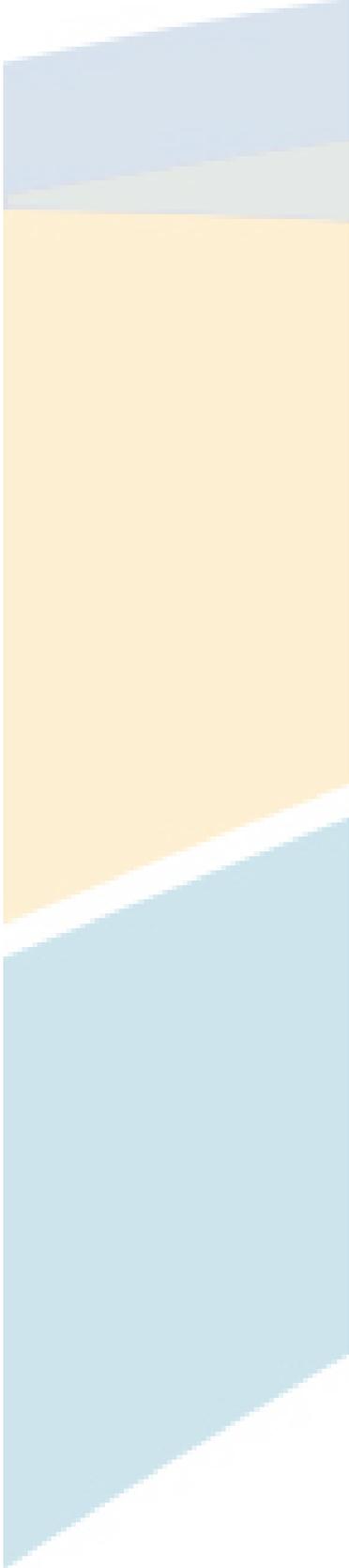
- the decision to impose a code on it, and/or;
- the imposition of a financial penalty, and/or;
- the amount of that financial penalty,

there is provision for it to appeal. It can do so through the General Regulatory Chamber of the First-tier Tribunal – which is part of Her Majesty's Court and Tribunals Service (HMCTS). Full details of this process are outlined on the HMCTS website.

Likewise, if a relevant person is dissatisfied about:

- the imposition of a financial penalty, and/or;
- the amount of that financial penalty

then they too can appeal through the General Regulatory Chamber of the First-tier Tribunal.



Links and further information

[The Copyright \(Regulation of Relevant Licensing Bodies\) Regulations 2014](#)

[The Minimum Standards](#)

[The IPO Website](#)

[Ombudsman Services Website](#)

[Independent Code Reviewer Website](#)

[The First-tier Tribunal General Regulatory Chamber Website](#)

[The Hargreaves Review of IP and Growth](#)

[Government Consultation on Copyright and Responses](#)

[Technical Review of the Codes Regulations and Government Response](#)

[The Enterprise and Regulatory Reform Act 2013](#)

[The Copyright, Designs and Patents Act 1988](#)

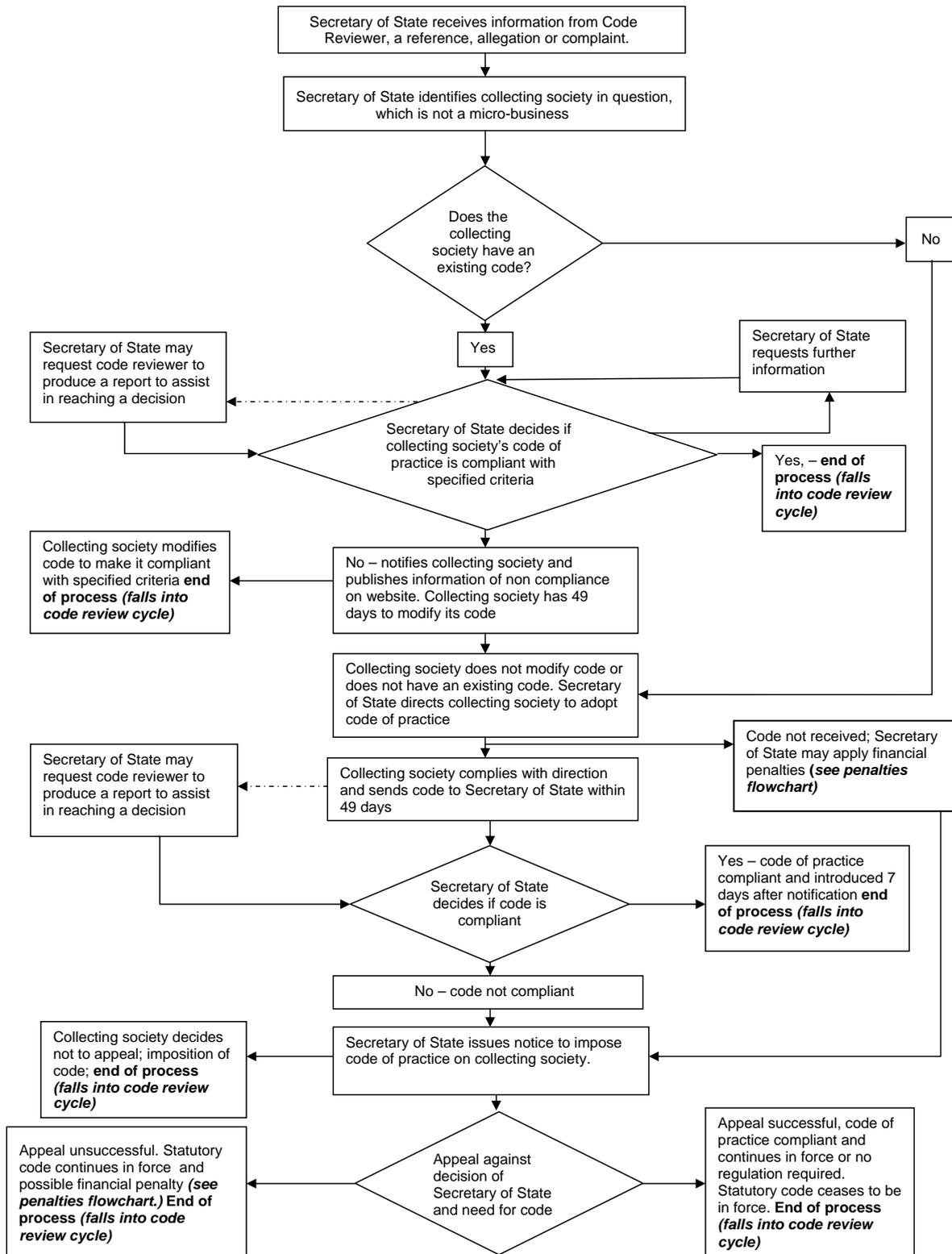
[The Collective Rights Management Directive](#)

If you require further information you can contact the Intellectual Property Office at:

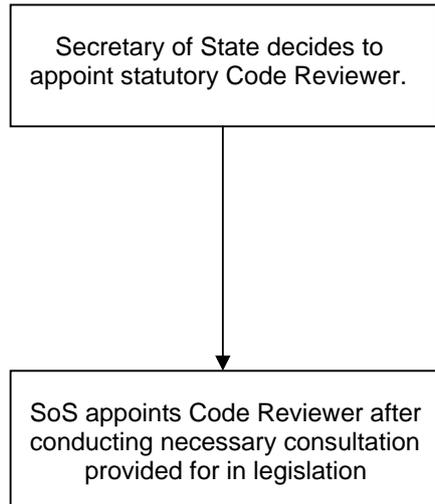
The Intellectual Property Office
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ
United Kingdom

Telephone +44 (0) 8459 500505
Fax +44 (0) 1633 813600
E-mail copyright.enquiries@ipo.gov.uk

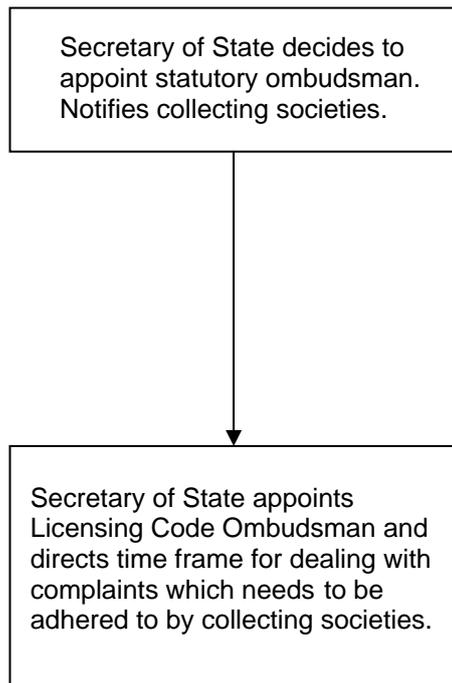
Appendix I – Flowchart of process for publishing a notice and/or imposition of a statutory code of practice



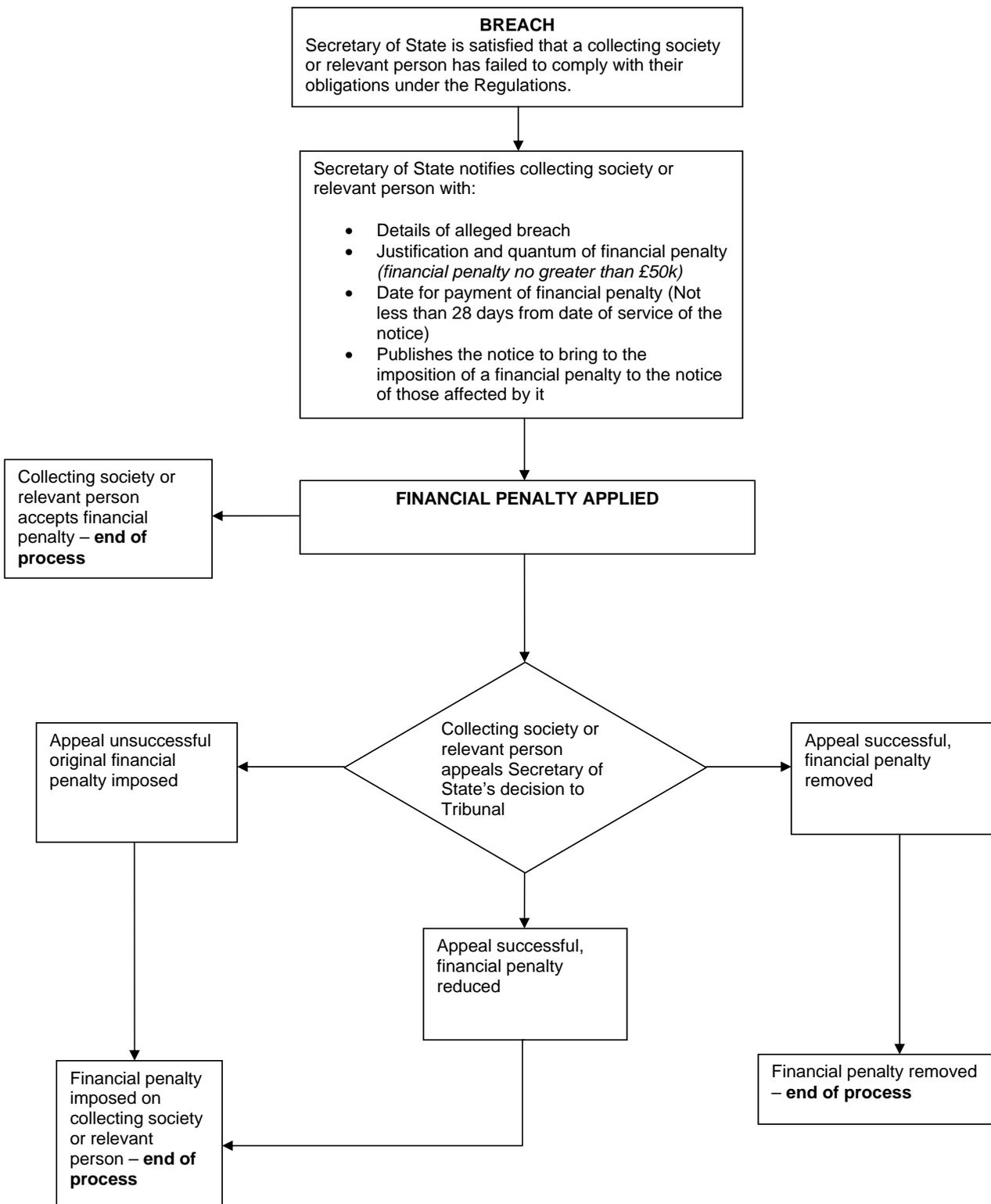
Appendix II – Flowchart of process for appointing a regulatory Code Reviewer



Appendix III – Flowchart of process for appointing a licensing code Ombudsman



Appendix IV– Flowchart of process for imposing a financial penalty



Concept House
Cardiff Road
Newport
NP10 8QQ

Tel: 0300 300 2000
Fax: 01633 817 777

For copies in alternative formats please
contact our Information Centre.

**When you no longer need this booklet,
please recycle it.**

DPS/C400-03-14



INVESTORS
IN PEOPLE

