

Intellectual Property Office
Consultation response from Educational Recording Agency
The Copyright (Regulation of relevant licensing bodies) Regulations 2014

4 October 2013

Responding to the consultation

On this form, please provide your responses to the questions outlined in this document. You do not have to complete the whole form – please answer the questions that are most relevant to you.

Please note: This consultation forms part of a publication exercise. As such, your response may be subject to publication or disclosure in accordance with access to information regimes (these are primarily the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environment Information Regulations 2004).

If you do not want part or whole of your response or name to be made public please state this clearly in the response, explaining why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system cannot be regarded as a formal request for confidentiality.

The closing date for responses is Monday 7 October 2013 at 12 midday.

About You and Your Organisation

Your name	Andrew Yeates
Job Title	General Counsel
Organisation Name	Educational Recording Agency Ltd
Organisation's main products/services	Educational copyright licensing

Question 1: Does the proposed definition correctly capture the type of body on which we consulted? Is it too narrow or too broad? What, if any impact, will this definition have on the various entities that are currently operating in the collective licensing market? Please give reasons for your answer?

Although the definition of “relevant licensing body” anticipates the definition to be used in the CRM Directive, its application against the definition of “licensing body” under s 116 Copyright, Designs and Patent Act 1988 (CDPA) is not entirely clear.

This is because the s 116 CDPA definition applies to the society or organisation which grants copyright licences, without reference to its ownership or control.

If a “relevant licensing body” is linked to whether or not it is owned or controlled by its members, it is important to understand whether “members” mean the rights holders on whose behalf the organisation is authorised to grant licences, or “members” being the individuals or entities that are the shareholders or owners of an organisation under company law.

In the case of ERA, its “members” in terms of company law include companies such as BBC Worldwide Limited and Open University Worldwide Limited, alongside unions such as Equity and the Musicians’ Union. Each “member” is then representative of a whole range of individual copyright owners.

The definition of “ECL scheme” currently suggests that it will be the only type of licensing scheme that will operate in accordance with authorisation by the Secretary of State. The current provisions of s 143 CDPA provide for a number of areas whereby the Secretary of State may certify licensing schemes prior to their operation. This needs to be reconciled with the new definition.

The definition of “micro business” in Regulation 2 is not consistent with the definition of micro business used in other regulations. To provide consistency with other Regulations (and changes that may be applied for all micro businesses under more general legislation), it may be preferable to include a definition that excludes “small licensing bodies” from these Regulations. The exempt bodies might be “relevant licensing bodies” which are micro businesses and (as a separate test) have a turnover below a specified level.

In this context it should be noted that ERA has less than 10 employees but the company has engaged fully in the process of setting up a voluntary Code of Practice and providing for its review in accordance with the Minimum Standards for collective management organisations.

Question 2: Are there any other circumstances in which you think that the Secretary of State may need to exercise the power to appoint an Ombudsman and/or Code Reviewer? Please describe what these are and give reasons for your answer.

No. However the Regulations should make clear the distinction between a Code Reviewer appointed under the statutory provisions and any Independent Code Reviewer appointed to review codes of practice under voluntary arrangements.

It would seem unhelpful if the Secretary of State were to appoint a (statutory or “Appointed”) Code Reviewer in a way that would conflict with the work of any Independent Code Reviewer who is operating and reporting on existing Codes of Practice under voluntary arrangements, particularly if the Independent Code Reviewer’s recommendations are awaiting publication or, if published, require some time to be put into practice.

Question 3: The Secretary of State must leave at least 28 days for the relevant licensing body to adopt a code of practice once it has been directed to do so. Is this a sufficient period of time for the licensing body to adopt such a code? If so, please say why. If not, please explain why not and make a case for a different period of time.

The 28 day period would raise practical difficulties for a small organisation to comply (particularly in view of the Sanction provisions in Regulation 10). Consideration of any appeal and consultation with members, drafting, internal review and approved publication would normally take a period of months rather than weeks. An initial period of three months would seem fairer if it is clear that steps are being taken towards compliance with a direction.

Question 4: Do the steps described between the Direction in Regulation 3 to the Imposition of a Code of practice in Regulation 5 make it sufficiently clear what process must be followed? If not, please say where you think the gaps are and how they might be filled.

Whilst a detailed timetable is provided for the issue of a Direction by the Secretary of State to impose a code of practice, it is less clear how the process will apply when a code of practice is in place, but its terms need adapting or updating to meet relevant criteria.

It is important that the Regulations allow for such a process of improvement (which may be much less time consuming or easier to provide for and far as rights holders and users are concerned, than the process of imposition of an entirely “new” statutory code).

It seems unclear how the 28 days referred to in Regulation 4 (1) links to any appeal that may be launched by a relevant licensing body upon receipt of a Direction by the Secretary of State under Regulation 4 (1) or a notice relevant to Regulation 5 (3).

It would be helpful if Regulation 13 was to include a timetable for a relevant licensing body to make relevant references under the provisions.

Question 5: What should be the principal features that determine whether a Code Reviewer and/or an Ombudsman is “suitably qualified” for their statutory roles?

Provisions for the appointment of a Code Reviewer should take account of the two routes by which a Reviewer may be appointed. On the one hand, an Independent Reviewer appointed under the principles which have been adopted by the British Copyright Council should reflect a process of advertisement of the post in line with Nolan principles. If someone has been appointed under this “voluntary” process, it will be important that they are enabled to do their job and report recommendations without this process being overridden or conflicted because of a “statutory” or “Appointed” Code Reviewer having been appointed by the Secretary of State.

Any Reviewer must have experience and knowledge of the relevant regulatory and legal framework under which licensing bodies operate (including in particular application of copyright law).

Ombudsman appointments should require recognition through British and Irish Ombudsman Association membership.

Question 6: Do you consider the proposals for applying a graduated scale to financial penalties will provide a proportionate response to reflect the respective severity of the breach? Do you consider the proposed difference in the quantum of the penalties is appropriate? If not, please explain your reasons.

The provisions of Regulation 10 (1) should properly apply to relevant licensing bodies as “relevant persons”. To extend the sanction provisions beyond normal application of company law to managers or members would seem unjustified in the absence of any evidence that such a specific discrimination linked to the operation of licensing bodies is required or justified.

Concerns have previously been raised concerning the effectiveness of any provisions for financial sanctions against non-profit making bodies operating as “relevant licensing bodies”. It is unfair for the “costs” of sanctions to fall upon rights holders when penalties are imposed for the late adoption of a Code of Practice that is intended to be put in place for their benefit.

The existing framework for corporate and individual liability under company law would seem the more appropriate benchmark.

Question 7: Do you think that the General Regulatory Chamber is the correct route of appeal? If not could you please say why and suggest an alternative appeal route.

Question 8: (Asked on behalf of the Tribunal Procedure Committee):

If you believe that the standard rules of procedure need to be supplemented to deal with appeals arising from these regulations -please explain why this is the case.

Please see suggested comments marked on the draft Regulations below which are made to assist transposition of the answers to the Consultation questions.

Please note: The information you supply will be held in accordance with the Data Protection Act 1988 and the Freedom of Information Act 2000. Information will only be used for its intended purpose. It will not be published, sold or used for sales purposes.

ERA Comments

Draft laid before Parliament under paragraph 7(4) of Schedule A1 to the Copyright, Designs and Patents Act 1988, for approval by resolution of each House of Parliament.

STATUTORY INSTRUMENTS

2014 No.

COPYRIGHT

**The Copyright (Regulation of relevant licensing bodies) Regulations
2014**

*Made - - - - ****

*Coming into force - - ****

The Secretary of State, in exercise of the powers conferred by paragraphs 1 to 7 of Schedule A1 to the Copyright, Designs and Patents Act 1988 (a), and the draft regulations having been laid before and approved by each House of Parliament, makes the following Regulations:

(a) 1988 c.48.

(b) 1907 c. 29.

(c) 2007 c.15.

PART 1

Preliminary

Citation and Commencement

1. These Regulations may be cited as the Copyright (Regulation of relevant licensing bodies) Regulations 2014 and shall come into force on [.....].

Interpretation

2. In these Regulations—

“Act” means the Copyright Designs and Patents Act 1988;

“Comptroller” shall have the same meaning as in the Patents and Designs Act 1907(b);

“ECL scheme” means a collective licensing scheme under which a relevant licensing body may grant licences in accordance with authorisation by the Secretary of State;

[This ECL scheme definition should recognise that the Secretary of State authorises other licensing arrangements under the CDPA. See s 143. Perhaps the definition might provide “may grant licences that apply to extended collective repertoire in accordance with authorisation by the Secretary of State”?](#)

[Alternatively cross refer back to specific provisions in Schedule 22 Enterprise and Regulatory Reform Act?](#)

“First-tier Tribunal” means the First-tier Tribunal established by section 3(1) of the Tribunals, Courts and Enforcement Act 2007(c);

“micro business” means a business with less than ten employees and which has a turnover or balance sheet total of less than 2 million Euros per annum;

This definition is not consistent with the definition used in other Regulations for “micro business”.

A more usual definition may be “a business with less than 10 employees”.

To provide consistency with other Regulations (and changes that may be applied for all micro businesses under more general legislation) it may be preferable to include a definition that excludes “small licensing bodies” from these Regulations? The exempt bodies might be “relevant licensing bodies” which are micro businesses **and (as a separate test) have a turnover below a specified level?**

“relevant licensing body” means any organisation 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 rightholder, for the collective benefit of those rightholders as its sole or main purpose and which is:

- (a) owned or controlled by its members; or
- (b) organised on a not for profit basis.

Clarification of “main purpose” required and relationship between “member” as a rights holder and “member” being a shareholder of a corporate entity?

“specified criteria” means the criteria set out in the Schedule.

PART 2

Regulation of relevant licensing bodies

Direction to adopt a code of practice

3.—(1) If the relevant circumstances are met, the Secretary of State may direct a relevant licensing body by a date stated in the direction (“Commencement Date”) to adopt and publish a code of practice that complies with the specified criteria.

(2) For the purposes of paragraph (1), the relevant circumstances are:-

(a) the relevant licensing body is not a micro-business with an annual turnover of below (2 million Euros); and

(b) that in the opinion of the Secretary of State the system of self-regulation of the relevant licensing body does not comply in material respects with the specified criteria.

(3) In deciding whether the code of practice of a relevant licensing body does comply in material respects with the specified criteria the Secretary of State may have regard to a report produced by a Code Reviewer who has been appointed in accordance with paragraph 24 of the specified criteria or by the Secretary of State under regulation 6.

(4) The Secretary of State may request a Code Reviewer to produce a report in order to assist him in making his decision under paragraph (3).

(5) The Commencement Date must be at least 42 days after the date on which the direction is made.

Effect of a direction

4. (1) The relevant licensing body must within 28 days of the date on which a direction is made notify to the Secretary of State a code of practice that complies in material respects with the specified criteria and that it proposes to adopt in accordance with the direction.

(2) In deciding whether the code of practice of a relevant licensing body does comply in material respects with the specified criteria the Secretary of State may have regard to a report produced by a Code Reviewer who has been appointed in accordance with paragraph 24 of the specified criteria or by the Secretary of State under regulation 6.

(3) Following receipt of a code of practice notified in accordance with regulation 4(1) and prior to the Commencement Date, the Secretary of State will inform the relevant licensing body in writing that the code of practice notified either:

(a) meets the specified criteria and is approved by the Secretary of State; or

(b) does not meet the specified criteria and that the Secretary of State intends to impose a Code of Practice on the relevant licensing body.

(4) Once its code of practice has been approved by the Secretary of State the relevant licensing body shall adopt the approved code of practice and operate its licensing activities in accordance with its approved code of practice from the Commencement Date. Does not some provision need to be made to allow for subsequent changes and developments which will in practice ensure that the “approved code” remains in line with the appropriate criteria in the Schedule?

Imposition of Code of Practice

5. – (1) Before imposing a code of practice the Secretary of State must –

- (a) be satisfied that the relevant licensing body has failed to adopt and operate an approved code of practice in accordance with regulation 4(4);
 - (b) give notice as provided -in regulation 5 (2) of the code of practice to be imposed on the licensing body, and
 - (c) consider during a reasonable period any representations made by the relevant licensing body in response to accordance with the notice and not withdrawn.
- (2) The notice must—
- (a) state the reasons for the proposed refusal of any code of practice notified by the relevant licensing body,
 - (b) contain the code of practice that the Secretary of State proposes to impose on the licensing body; and
 - (c) state the period (not less than 14 days starting with the date of delivery the notice) within which representations may be made in relation to the proposed imposition of the code of practice.
- (3) Where the Secretary of State decides to impose the code of practice contained in the notice the Secretary of State will notify the relevant licensing body and give it a written statement of reasons for the determination together with the date from which the approved code of practice is to have effect as the code of practice adopted by the body (the “Effective Date”).
- (4) The relevant licensing body shall operate its activities in accordance with the imposed code with effect from the Effective Date.

Code reviewer

- 6.-(1) The Secretary of State may appoint a suitably qualified person as Appointed Code Reviewer to review and report to the Secretary of State on the codes of practice adopted by relevant the licensing bodies, including how they relate to the specified criteria, and on compliance with the codes of practice.
- (2) Before making an appointment under paragraph (1) the Secretary of State shall consult with those persons who the Secretary of State considers to represent the interests of licensing bodies, licensees, the persons on whose behalf a relevant licensing body is authorised to negotiate or grant licences and the Comptroller.
- (3) The Appointed Code Reviewer may serve notice on any relevant licensing body requiring it to supply to the Appointed Code Reviewer information for the purposes of a review or report to be produced by the Appointed Code Reviewer.
- (4) The Secretary of State may pay the reasonable expenses and allowances of the Appointed Code Rreviewer.

Licensing Code Ombudsman

- 7.- (1) The Secretary of State may appoint a suitably qualified person as Licensing Code Ombudsman to investigate and determine disputes about a relevant licensing body’s compliance with its code of practice.
- (2) A relevant licensing body, licensee or a person on whose behalf a relevant licensing body is authorised to negotiate may refer a dispute about a relevant licensing body’s compliance with its code of practice or other matter to the Licensing Code Ombudsman.
- (3) The Licensing Code Ombudsman may serve notice on any relevant licensing body or other person requiring it to supply to the Licensing Code Ombudsman information that is directly relevant -for the purposes of investigating a dispute referred to in paragraph (1). (reasonable cost caps should be relevant to provision of information requested)?
- (4) A relevant licensing body shall be required without prejudice to wide legal remedy to observe any comply with a determination of the Licensing Code Ombudsman.
- (5) The Secretary of State may pay the reasonable expenses and allowances of the Licensing Code Ombudsman.

Recovery of costs by the Secretary of State

8.- The Secretary of State may require a relevant licensing body to which regulations 3 to 7 apply to pay the Secretary of State a fee to reimburse the Secretary of State any relevant costs incurred by the Secretary of State.

PART 3

Information, sanctions and penalties

Secretary of State's powers to request information

9. —(1) The Secretary of State may, ~~for any purpose related to its licensing activity~~, serve notice on any relevant licensing body requiring it to supply to -

- (a) the Secretary of State; or
- (b) the Approved Code Reviewer, for the purposes of a review or report; or
- (c) the Licensing Code Ombudsman, for the purposes of an investigation or determination

such information as may be reasonably specified or described in the notice relating to its licensing activities relevant to a Code of Practice, and to supply it at a time and place and in a form and manner so specified (unless reasons of business confidentiality, data protection or company law requirements apply in ways that would make the provision of information an offence).

(2) The person to whom any document is produced in accordance with a notice under this regulation may, for the purposes of complying with obligations under these Regulations any relevant purpose, copy the document so produced.

(3) Any reference in this regulation to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form. (Should not usual rules of use of documents in legal proceedings apply)?

Sanctions and penalties for failure to comply with a condition or code of practice requirements

10. — (1) The Secretary of State may impose a sanction or penalty of such amount as he considers appropriate on a relevant licensing body ~~or on a director, manager or similar officer of the relevant licensing body or, where the body's affairs are managed by its members, on a member ("relevant person") or any other person~~ (the deleted provisions should be governed by appropriate application of Company Law) if the Secretary of State is satisfied that the relevant licensing body has failed to comply with its obligations under:

- (a) regulations 4(4) (adoption of an approved code of practice), 5(4) (compliance with an imposed code of practice) or 7(4) (compliance with determination of the Licensing Code Ombudsman); or
- (b) regulations 4(1) (notification of code of practice), 6(3) (supply of information to Appointed Code Reviewer), 7(3) (supply of information to Licensing Code Ombudsman) or 9(1) (supply of information in accordance with a requirement imposed by the Secretary of State).

(2) Any penalty imposed under paragraph (1)(a) shall not exceed £50,000.

(3) Any penalty imposed under paragraph (1)(b) shall not exceed a fine of up to level 5 on the standard scale and for continued contravention a daily default fine of up to one tenth of level 5 on the standard scale for each day until the required action is taken.

Imposition of sanctions and penalties: main procedural requirements

11. —(1) Before imposing a sanction or penalty under regulation 10, the Secretary of State must—

- (a) give notice of the proposed sanction or penalty, and
 - (b) consider any representations made in response to aecordance with the notice and not withdrawn.
- (2) The notice must state—
- (a) that the Secretary of State proposes to impose a sanction or penalty, 5

- (b) the nature of the proposed sanction or the amount of the proposed penalty,
 - (c) the obligation that the Secretary of State is satisfied has been contravened or is being contravened,
 - (d) the acts or omissions which the Secretary of State considers constitute the contravention,
 - (e) any other facts which the Secretary of State considers justify the imposition of a sanction or penalty and the nature of the proposed sanction and the amount of the proposed penalty,
 - (f) the manner in which, and place at which, it is proposed to require the penalty to be paid, and
 - (g) the period (not less than 21 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed penalty.
- (3) As soon as practicable after imposing a sanction or penalty, the Secretary of State must give notice of the sanction or penalty.
- (4) The notice must state—
- (a) the Secretary of State has imposed a sanction or penalty on the relevant licensing body or relevant person,
 - (b) the nature of the sanction or the amount of the penalty,
 - (c) the acts or omissions which the Secretary of State considers constitute the contravention,
 - (d) any other facts which the Secretary of State considers justify the imposition of a sanction or penalty and the nature of the sanction or the amount of the penalty,
 - (e) the manner in which, and place at which, the penalty is required to be paid, and
 - (f) the date or dates, no earlier than the end of the period of 28 days from the date of service of the notice on the relevant licensing body or relevant person, by which the penalty or (as the case may be) different portions of it, are required to be paid.
- (5) A notice under this regulation must be given by—
- (a) serving a copy of the notice on the relevant licensing body and any relevant person, and
 - (b) publishing the notice in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

Sanctions and Penalties: further procedural requirements

12.—(1) If, after giving notice under regulation 11 the Secretary of State decides not to impose a sanction or penalty, the Secretary of State must give notice of that decision.

- (2) A notice under this regulation must be given by—
- (a) serving a copy of the notice on the relevant licensing body and any relevant person, and
 - (b) publishing the notice in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

Appeals (specify a timetable for referrals?)

13. —(1) ~~A~~ If a relevant licensing body ~~may refer~~ or relevant person is aggrieved by—

- (a) the imposition of a code of practice; or
 - (b) the nature of a sanction or the amount of any penalty
- ~~the relevant licensing body or relevant person may apply~~ to the First-tier Tribunal.

(2) On an application under this regulation, the First-tier Tribunal may make such order as it considers appropriate. 6

- (3) Where the appeal is against the imposition of a code of practice the code shall continue in force until the First-tier Tribunal has determined the application.
- (4) Where an application has been made under this regulation, the sanction or penalty may not be required to be performed or paid until the application has been determined, withdrawn or otherwise dealt with.
- (5) Where the First-tier Tribunal substitutes a lesser penalty it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers appropriate.

Recovery of fees, sanctions and penalties

14. Where fees imposed under regulation 8 or a sanction or penalty imposed under regulation 10, or any portion of such costs, sanction or penalty, has not been paid or performed by the date on which it is required to be performed or paid and—

- (a) no application relating to the sanction or penalty has been made under regulation 13 during the period within which such an application may be made, or
 - (b) any such application which has been made has been determined, withdrawn or otherwise dealt with,
- the Secretary of State may recover from the relevant licensing body or relevant person any of the costs, sanction or penalty which has not been paid or performed; and in England and Wales and Northern Ireland such costs, sanction or penalty may be recovered as a civil debt due to the Secretary of State.

Viscount Younger of Leckie

Parliamentary Under Secretary of State for Intellectual Property
2013 Department for Business, Innovation and Skills

Schedule Regulation 3(1)

The specified criteria for the code of practice are set out in this Schedule.

The code of practice shall [provide for the](#) ~~require the~~ relevant licensing body to:

Obligation to rights holders

1. offer membership to all rights holders in the sector it manages;
2. have rules or constitution that enables members (and non-members if operating an ECL scheme) to withdraw their rights on reasonable notice;
3. offer fair and balanced representation of rights holder members in the internal decision making process of the relevant licensing body;
4. provide copy of rules/constitution to members and potential members;

Representation 7

5. act in the best interests of its members as a whole;
6. treat all members (and non member rights holders if operating an ECL scheme) fairly, honestly, reasonably, impartially, courteously and in accordance with its rules and membership agreement;
7. deal with all members transparently;

Obligations to licensees

8. treat its licensees and potential licensees fairly, honestly, impartially, courteously and in accordance with its rules and any licence agreement;
9. ensure that its dealings with licensees or potential licensees are transparent;
10. consult and negotiate fairly, reasonably and proportionately in relation to the terms and conditions of a new or significantly amended licensing scheme;
11. provide information to licensees and potential licensees about its licensing schemes, their terms and conditions and how it collects royalties;
12. ensure that all licences and licensing schemes are drafted in plain English and are accompanied by suitable explanatory material.

Licensees

13. The code of practice shall set out the requirements that the relevant licensing body will impose on licensees including:

- (a) to respect the rights of creators and rights holders including their right to receive fair payment when their works are used; and
- (b) that copyright material will only be used in accordance with the terms and conditions of a licence.

Conduct of employees, agents and representatives

The code of practice shall require the relevant licensing body to ensure that:

14. its staff training procedures for employees, agents and representatives includes conduct that complies with the obligations to members and licensees set out in these specified criteria;
15. its staff provide licensees and potential licensees with clear information, including information about cooling off periods which may apply to new licences; and
16. its employees and agents are aware of procedures for handling complaints and resolving disputes and are able to explain those procedures to members, licensees and the general public in plain English.

Information and transparency – monitoring and reporting requirements

17. The code of practice shall state that the relevant licensing body shall:

- (a) inform members, licensees and potential licensees, on request, about the scope of its repertoire, any existing reciprocal representation and the territorial scope of its mandate;
- (b) maintain and make available to members on request, a clear distribution policy that includes the basis for calculating remuneration, the frequency of payments, and clear information about deductions and what they are for;
- (c) provide details of tariffs in a uniform format on website;
- (d) provide details of its code of practice and complaints procedure, accessible via a link on the website homepage;
- (e) undertake that all information provided is kept up to date, is readily accessible and written in clear language that can be easily understood by licensees, potential licensees and members.

Reporting requirements 8

18. The code of practice shall state that the relevant licensing body shall publish an annual report which includes:

- (a) the number of rights holders represented, whether as members or through representative arrangements including, where possible and if applicable, an estimate of the number of rights holders represented by an ECL scheme;
- (b) the distribution policy;
- (c) total revenue from licences granted for its repertoire during the reporting period;
- (d) total costs incurred in administering licences and licensing schemes;
- (e) itemised costs incurred in administering licences and licensing schemes;
- (f) allocation and distribution of payments of revenues received and extent to which this is compliant with its distribution policy;
- (g) procedures for the appointment of directors to the relevant licensing body and details of any appointment during the course of the reporting period;
- (h) details of remuneration of each director of the relevant licensing body during the reporting period; and
- (i) a report regarding compliance with code of practice over the past year, including data on total level of complaints and resolution methods.

Complaints handling

19. The code of practice is to provide that the relevant licensing body shall adopt and publicise:

- (a) procedures for dealing with complaints from members, non member rights holders (if operating an ECL scheme), licensees and potential licensees; and
- (b) a complaints procedure.

20. The complaints procedure shall:

- (a) define the categories of complaints and explain how each will be dealt with;
- (b) ensure information on how to make complaints is readily accessible to members, licensees and potential licensees;
- (c) provide reasonable assistance to a complainant when forming and lodging a complaint;
- (d) specify who will handle a complaint on behalf of the relevant licensing body;
- (e) indicate timeframe for the handling of a complaint or dispute;
- (f) provide that the relevant licensing body will give a written response to each complaint made in writing;
- (g) provide that the relevant licensing body will give a written decision in any dispute and give reasons for that decision;
- (h) ensure that the relevant licensing body makes adequate resources available for the purpose of responding to complaints and resolving disputes; and
- (i) provide that the relevant licensing body will regularly review its complaint handling and dispute resolution procedure to ensure they comply with the minimum standards.

Ombudsman Scheme

21. The code of practice shall require the relevant licensing body to appoint and fund an independent and impartial person to arbitrate on disputes.

22. The code of practice shall provide that the Ombudsman shall be the final arbiter on complaints between the relevant licensing body and its members or licensees in relation to these specified criteria for their code of practice.

23. The Ombudsman service will not include matters that are within the jurisdiction of the Copyright Tribunal. 9

Independent Code Reviewer

24. The relevant licensing body shall appoint and fund an independent code reviewer to monitor and review the performance of the relevant licensing body against these specified criteria.

25. The independent review shall comprise an initial review of the code of practice against the specified criteria one year after implementation and then at intervals of at least three years thereafter.

26. The code of practice shall provide for the code reviewer to publicise and consult during the course of his review and to publish his conclusions.

Explanatory Note

(This note does not form part of the Regulations)

Part 2 of the Regulations sets out the circumstances in which the Secretary of State can direct a relevant licensing body to adopt or impose on a relevant licensing body a code of practice which contains the specified criteria set out in the Schedule.

Part 3 of the Regulations sets out the powers of the Secretary of State concerning information, sanctions and penalties.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport NP10 8QQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.