



Consultation response form

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	Richard Combes
Job Title	Head of Rights and Licensing
Organisation Name	ALCS
Organisation's main products/services	

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?

In the interests of clarity, the link between 'rightsholders' in the main body of the definition and 'members' in the sub-clause should be made more explicit.

While, broadly speaking, the definition used in the draft regulations would apply to the 'traditional' status of a CMO, being a non-profit body owned/ controlled by the membership, it is conceivable that new models for collective rights management will develop. The regulations should encompass such models particularly in situations where rights management is undertaken for profit and by organisations without the internal governance controls afforded by a membership structure. In these cases the need for regulatory oversight is clear.

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.

The circumstances described appear to be comprehensive.

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 'specified criteria' upon which codes are to be based is, in some cases, described in fairly broad terms. This may give rise to some subjective interpretations of how a code developed under the system of self-regulation meets the criteria, particularly as the criteria applies to a diverse range of organisations with different operational functions and service levels. In such circumstances it should be possible for a CMO to make representations demonstrating how the original code gives effect to the criteria before the direction is issued and the 28 day period starts running.

On a practical level, where a code amendment involves a policy decision requiring a meeting of the board (and possibly even the members) 28 days may not provide sufficient time for this.

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.

Regulation 5(4) establishes that an imposed code is deemed to operate from the 'Effective Date'. Regulation 13 allows a CMO to appeal against the imposition of a code and states that the imposed code remains in force until the appeal is determined. However the Regulations do not appear to deal with a situation in which an original code is 'reinstated' following a successful appeal. It is also unclear whether a CMO that appealed successfully would still be liable to pay the Secretary of State's costs under Regulation 8.

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?

The criteria used to appoint the Code Reviewer under the self-regulatory process provides some useful guidance, these included: independence, analytical ability, experience of legal process and / or regulation and the ability to maintain independence and impartiality of thought and judgement in situations where opposing views may be held by stakeholders.

Given the diverse nature of the CMOs operating in the UK, it is also clearly useful to have an overall understanding of this sector, something both the Ombudsman and Code Reviewer under the self-regulatory system have acknowledged through joint and individual meetings with the bodies concerned.

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 financial sanctions do not appear to be proportionate either in terms of the quantum or the parties who are liable to pay them and should be reviewed with the support of some detailed analysis of the range of potential infractions the penalties seek to address.

Regarding the liable individuals, the list in the regulations is unnecessarily extensive: unless managers, officers and members are also directors, and therefore subject to the duties and responsibilities imposed by company law, there is no justification for including them with the definition of a “relevant person.”

As to the scale of the financial penalties, these are also disproportionate to the issues they seek to address and overlap with the remedies already available within the regulatory process. For example, the failure to comply with an imposed code of practice may result in a fine of up to £50k. Such failure could include a range of minor infractions the remedy for which would be through the CMO complaints process which ultimately provides for a determination and possible fine by the Ombudsman, the level of which would in most cases be a fraction of the rates proposed in the draft regulations.

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.

No comment.

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.

No comment.

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.