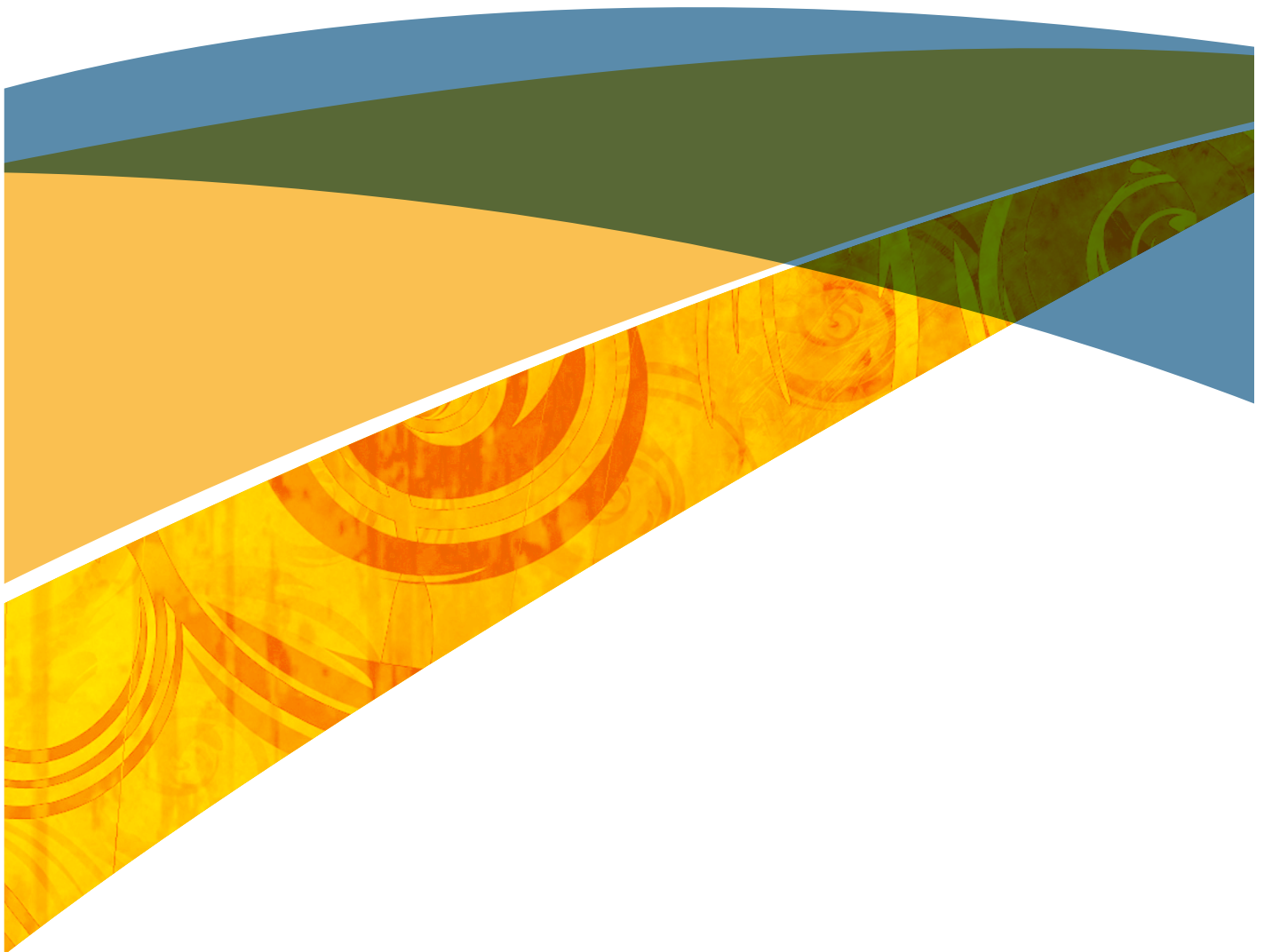
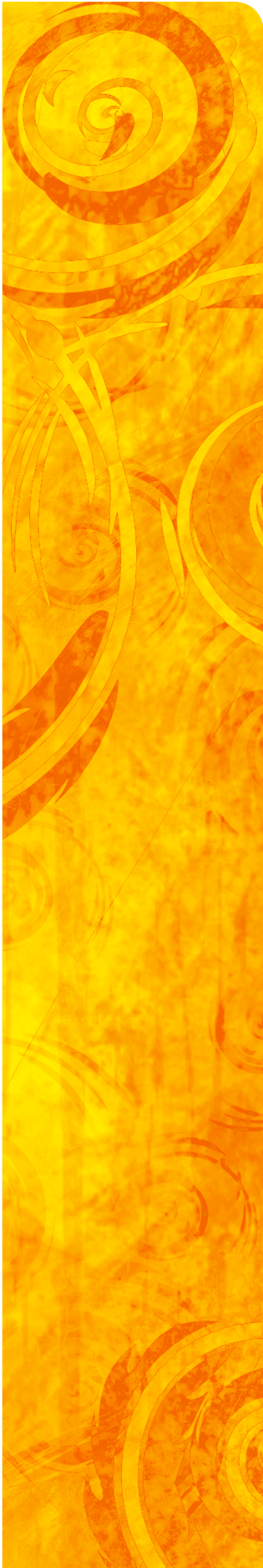




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Changes to Schedule 1 of the Copyright, Designs and Patents Act 1988 and the Duration of Copyright and Rights in Performances Regulations 1995: Government Response and Summary of Responses





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Introduction

The Government consulted¹ on technical changes to Schedule 1 Copyright, Designs and Patents Act (CDPA) 1988 and Regulation 16 of the Duration of Copyright and Rights in Performances Regulations 1995 (the 1995 Regulations). The Government considers these changes necessary to ensure there is consistency in UK law as a result of the repeal of section 52 CDPA. In addition, the consultation outlined the Government's intent to repeal Regulations 24, 25, 34 and 35 of the 1995 Regulations, which relate to the compulsory licensing of works in which copyright has been revived. The repeal of these Regulations is needed to ensure UK law is compliant with EU law and will allow rights holders to control the use of their works. The changes were illustrated by way of draft Regulations. While the UK remains in the EU, UK copyright laws will continue to comply with the EU legislation. The continued effect of EU law following our exit from the EU will depend on the terms of our future relationship.

Section 52 CDPA was repealed on 28 July 2016. It previously limited the term of copyright protection for industrially manufactured artistic works (any artistic work of which more than 50 copies are made) to 25 years. The effect of this repeal is that these works are now entitled to full copyright protection of life of author plus 70 years.

The Government received 9 responses to this technical consultation².

¹ Consultation document at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539321/Changes-to-Schedule-1-CDPA-and-Duration-of-Copyright-Regulations.pdf. The consultation ran from 21 July 2016 to 15 September 2016.

² Respondents are listed in Annex A.



Changes to Schedule 1 CDPA and repeal of Regulation 16 of the 1995 Regulations

The Government decided to amend Paragraphs 5 and 6 of Schedule 1 CDPA and Regulation 16 of the 1995 Regulations, to be more explicit about the copyright protection of works which were protected in other EU Member States on 1 July 1995, as explained in the [consultation](#)³. This was announced on 21 April 2016, pending the outcome of the technical consultation on the best way to achieve this.

Paragraph 6 of Schedule 1 CDPA prevents artistic works having copyright protection if:

- they were made prior to 1 June 1957,
- were capable of being registered as designs, and
- were used, or intended to be used, as a pattern or model to be multiplied by any industrial process (including reproduced more than 50 times).

On 21 July 2016 the Government launched the technical consultation, outlining its intention to amend this paragraph to ensure these works would be entitled to the same level of copyright protection as other artistic works. Additionally, the Government consulted on its intention to amend paragraph 5(1) of Schedule 1 to ensure compatibility with the proposed changes to paragraph 6. The Government also consulted on its intention to amend Regulation 16 of the 1995 Regulations. This Regulation requires amendment to make it clear that pre-1 June 1957 artistic works are entitled to the full term of copyright protection if they were protected by copyright in at least one European Economic Area (EEA) state on 1 July 1995.


The consultation asked whether these changes would achieve the aim of equalising copyright protection for the affected works, and whether they would confer copyright protection on any matter not currently eligible for such protection in the UK. Whilst the **responses generally agreed that the Government's proposed changes would achieve their aims without unintended consequences**, a few specific questions and points were raised.

Some respondents emphasised that the changes to Schedule 1 CDPA would not affect the criteria that determine whether a work is entitled to copyright protection and, in particular, that works must qualify as copyright works in the UK in order to benefit from the term of copyright protection here. The Government agrees with this point and has updated guidance⁴ to provide further information on works that may be entitled to copyright protection, including further clarification on works of artistic craftsmanship.

One respondent to the consultation queried whether the proposed changes to Schedule 1 CDPA and Regulation 16 should in fact be made using primary legislation. However, this is not necessary as the Government intends to make these changes under section 2(2) of the European Communities Act 1972; it is within the Government's power to make these changes using the appropriate secondary legislation.

3 Government response to this consultation at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/515305/Gov-response_s52.pdf

4 Published to accompany the repeal of section 52 CDPA https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551236/160408_guidance_s52_final_web_accessible.pdf



One respondent questioned whether the repeal of paragraph 6 would be preferable to the proposed amendment on the basis that there is inconsistency with EU law in the entire paragraph. However, the Government believes that an amendment to the paragraph is preferable to repeal, as previously set out in the consultation and in this response, as this is the minimum amendment that achieves the stated aims without unintentionally conferring copyright protection on items that previously never had copyright protection.

Government response

Having carefully considered the responses to the technical consultation, the Government intends to make the changes to Schedule 1 CDPA and Regulation 16 of the 1995 Regulations that were laid out in the consultation. This will be commenced on the next Common Commencement Date, 6 April 2017⁵.

⁵ Government uses Common Commencement Dates to minimise the impact of new regulations on business. Under this initiative, regulations that affect businesses are commenced only on 1 October or 6 April each year.

Repeal of regulations 24, 25, 34 and 35 of the 1995 regulations, and introduction of transitional provisions related to their repeal

Regulations 24, 25, 34 and 35 of the 1995 Regulations concern any works that are, or could be, the subject of a compulsory licence. It is the Government's view that the provisions are at odds with EU law and, in particular, Article 2 of Directive 2001/29/EC 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive)⁶, which requires the right of reproduction to be an exclusive one.

Regulations 24, 25, 24 and 35 allow compulsory licensing of works in which copyright had been "revived" as a result of the extension of term of copyright protection from 50 to 70 years after the death of the author. In the consultation, the Government outlined its intention to repeal these regulations. The Government also outlined its intention to introduce some transitional provisions for the repeal of these Regulations.

The consultation asked whether these amendments would achieve the aim of complying with Article 2 of the InfoSoc Directive and whether there were any other Regulations that should be repealed or amended in light of these issues. Whilst the **responses generally agreed that the Government's proposals achieved their aims, and that all relevant Regulations had been identified**, a few specific questions and points were raised.

There was a concern from one respondent that transitional provisions would lead to stockpiling of compulsory licences before the repeal date. Whilst the Government acknowledges this concern, the intention to repeal these provisions has been clearly signposted since 2015 without any concomitant stockpiling. As such the Government does not believe that stockpiling will become commonplace in the lead up to the repeal.

Another respondent questioned whether these changes were necessary given that it had been more than twenty years since the 1995 Regulations came into force, and that there were presumably no works that could be licensed under these Regulations. The Government believes that some works are still eligible for compulsory licensing, in particular some old photographs and films, which was supported by another response to the technical consultation.

Some respondents asked for guidance on how the transitional provisions for the repeal of Regulations 24 and 34 will work. The Government believes that the transitional provisions for these Regulations are proportionate to the policy objective, namely compliance with Article 2 of the InfoSoc Directive. The Government recognises there may be occasions when a royalty may have already been paid for the use of work that will not occur until after the repeal comes into force. The transitional provisions will maintain compulsory licensing only for acts where a royalty or remuneration has been paid prior to the date the Regulations come into force, and which relate to use of a work on or after the date of the repeal. Rights holders will not be subject to the compulsory licensing regime for any new acts of copying where a royalty or remuneration has not been paid, from the date the Regulations come into force. Examples of how the compulsory licence regime will work after the repeal of the Regulations are provided.

⁶ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, the "InfoSoc Directive" can be accessed here: <http://eur-lex.europa.eu/legal-content/EN/%20ALL/?uri=celex%3A32001L0029>



Government response

In light of the generally favourable responses and the underlying policy rationale to ensure compliance with EU law, the Government intends to repeal Regulations 24, 25, 34 and 35 of the 1995 Regulations and provide transitional provisions, as outlined in the technical consultation. This will be commenced on the next Common Commencement Date, 6 April 2017.

The Government has made one change to the wording of the transitional provisions to better reflect the nature of transactions for compulsory licences in these transitional provisions; a royalty or remuneration must be “agreed or determined” rather than “paid”.

The following guidance is provided to assist those who are affected by this repeal.

What happens if I gave notice of my intention to use a work (e.g. show a film at a film festival) under Regulation 24, and paid a royalty in respect of that use but intend to use this work (e.g. show the film) after the date the repeal comes into force?

In this situation the rights holder would be subject to the compulsory licensing regime and therefore the act of showing the film at a film festival would be treated as licensed

What if I am planning to give notice of my intention to use a work under the compulsory licensing regime but have not yet done so?

If notice is given before the repeal date but no payment is made then the act would not be treated as licensed by the copyright owner.

After 5 April 2017, what should I do if I wish to use a work but I have not paid for the use of that work under the compulsory licensing regime?

After this date, anyone wishing to use a work will need to get permission from the rights holder, as they would when looking to license any other type of copyright work, unless a copyright exception⁷ can be relied on.

I am a right holder of works that may be affected by the repeal of these provisions; how will this affect me?

Currently certain works in which copyright has been revived are subject to compulsory licensing. This limits the right(s) holders' ability to control the use of their works. After the provisions are repealed the compulsory licensing regime will no longer exist, and right holders will have control over how their works are used. However, under the transitional provisions, right(s) holders will need to honour the compulsory licensing regime where a royalty or remuneration has been paid prior to the date the Regulations come into force, and which relate to use of a work on or after the date of the repeal.

⁷ <https://www.gov.uk/guidance/exceptions-to-copyright>



Other issues

In responses to the consultation, wider issues were raised which were not directly related to the specific changes the Government proposed in relation to Schedule 1 and Regulations 16, 24, 25, 34 and 35:

- One respondent queried whether the Copyright (Industrial process and excluded articles No 2) Order 1989 needed to be repealed. As the Order in question was made via the legislative powers provided in section 52 CDPA, the Order was repealed alongside the repeal of section 52.
- One respondent stated that broadcaster rights provided by Schedule 1 CDPA do not provide adequate protection for all broadcasters. This issue will be considered separately by the Government.
- One respondent queried how ownership of copyright can be proven prior to legal action, such as claiming licence fees when ownership is unclear. This will be considered separately by the Government.

Next steps

The draft statutory instrument to effect these changes is included in Annex B of this document. This instrument will come into force using the negative resolution process in Parliament and it is the Government's intention that it will come into force on 6 April 2017.



Annex A - Respondents

Nine (9) responses were received to this technical consultation. Responses are online, subject to redaction to remove personal or confidential data.

Two (2) responses from individuals

Association of Photographers

British Film Institute (BFI)

Powell Gilbert LLP

Onske Interiors

Pablo Star Media

Producers Alliance for Cinema and Television (PACT)

The Design and Artists Copyright Society (DACs)

 STATUTORY INSTRUMENTS

2016 No.

COPYRIGHT

The Copyright (Amendment) Regulations 2016

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	6th April 2017

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to matters relating to copyright(b).

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Copyright (Amendment) Regulations 2016 and come into force on 6th April 2017 (“the commencement date”).

Amendments to the Copyright, Designs and Patents Act 1988

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

(2) In paragraph 5 of Schedule 1—

- (a) in sub-paragraph (2)(a) omit “or”;
- (b) at the end of sub-paragraph (2)(b) for the full-stop substitute “, or”;
- (c) after sub-paragraph (2)(b) insert—

“(c) where the work is an artistic work in which copyright subsists as a result of the disapplication of paragraph 6(1) by paragraph 6(1A)”.

(3) In paragraph 6 of Schedule 1 after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply to an artistic work which was on 1st July 1995 protected under the law of another EEA state relating to copyright or related rights.”.

(a) 1972 c.68; by virtue of the amendment of section 1(2) of that Act by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom arising under the EEA Agreement.
 (b) S.I. 1992/707 and S.I. 1993/595.
 (c) 1988 c.48.

Amendments to the Duration of Copyright and Rights in Performances Regulations 1995

3.—(1) The Duration of Copyright and Rights in Performances Regulations 1995(a) is amended as follows.

(2) In regulation 16 (Duration of copyright: application of new provisions)—

(a) at the end of paragraph (c) omit “and”

(b) at the end of paragraph (d) for the full-stop substitute “; and”

(c) after paragraph (d) insert—

“(e) to existing works which qualify for copyright protection as a result of the disapplication of paragraph 6(1) of Schedule 1 to the 1988 Act by sub-paragraph (1A) of paragraph 6 of Schedule 1 to the 1988 Act.”.

(3) Subject to regulation 4, regulation 24 (Revived copyright: use as of right subject to reasonable royalty) is revoked.

(4) Regulation 25 (Revived copyright: application to Copyright Tribunal) is revoked.

(5) Subject to regulation 5, regulation 34 (Revived performance rights: use as of right subject to reasonable remuneration) is revoked.

(6) Regulation 35 (Revived performance rights: application to Copyright Tribunal) is revoked.

Transitional provisions

4. Regulation 24 of the Duration of Copyright and Rights in Performances Regulations 1995 applies on or after the commencement date in relation to acts restricted by copyright done in relation to a work in which revived copyright subsists but only where, in relation to those acts, a royalty or remuneration is agreed or determined for the purposes of that regulation before the commencement date.

5. Regulation 34 of the Duration of Copyright and Rights in Performances Regulations 1995 applies on or after the commencement date in relation to acts which require the consent of the rights owner done in relation to a performance in which revived performance rights subsist but only where, in relation to those acts, remuneration is agreed or determined for the purposes of that regulation before the commencement date.

Neville-Rolfe

Minister of State for Energy and Intellectual Property
Department for Business, Energy and Industrial Strategy

Date

(a) S.I. 1995/3297; there are amendments not relevant for the purposes of these Regulations.

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