Draft Regulations 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.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

COPYRIGHT

The Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014

Made - - - -	*****
Coming into force - -	*6th April 2014*

A draft of the Regulations has been laid before and approved by each House of Parliament under paragraph 7(4) of Schedule A1 to the Copyright, Designs and Patents Act 1988(**1**).

The Secretary of State, in exercise of the powers conferred by section 116(5) of and paragraphs 1 to 7 of Schedule A1 to that Act, makes the following Regulations:

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 6th April 2014.

Interpretation

2. In these Regulations—

"the Act" means the Copyright, Designs and Patents Act 1988;

"code of practice" includes any part of a code of practice;

"code reviewer" means a person who has been appointed by the Secretary of State under regulation 6;

"Comptroller" shall have the same meaning as in the Patents and Designs Act 1907(**2**);

(**1**) 1988 c.48 as amended by the Enterprise and Regulatory Reform Act 2013 c.24, s77(4), Schedule 22 Part 1, paragraph 1 which inserted Schedule A1 into the Act.

(**2**) 1907 c.29 section 62(2) as amended by the Trade Marks Act 1994 (c. 26) section 106(1) and Schedule 4 paragraph 2(2)(b).

"Extended Collective Licensing Scheme" means a collective licensing scheme under which a relevant licensing body which is authorised by the Secretary of State may grant licences in respect of—

(a) copyright works in which copyright is owned by non-member right holders; or

(b) performers' rights where the acts restricted in relation to the performance are owned by non-member right holders;

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

"licensing code ombudsman" means a person who has been appointed by the Secretary of State under regulation 7;

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

"non-member right holder" means a right holder who is represented by the relevant licensing body under an Extended Collective Licensing Scheme but who is not a member of the relevant licensing body and whose rights are not the subject of an express contractual agreement with the relevant licensing body for the licensing of copyright works or performers' rights;

"potential licensee" means any person who has communicated with the relevant licensing body and expressed an interest in being granted a licence in respect of a copyright work or a performer's right;

"relevant licensing body" means 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 right holder, for the collective benefit of those right 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;

"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;

"right holder" means the owner of the copyright in a copyright work or of a performer's right and includes an exclusive licensee of the copyright owner;

"specified criteria" means the criteria set out in the Schedule;

"transparent" means that, in dealing with any of its members, licensees or potential licensees, the relevant licensing body provides to that member, licensee or potential licensee any information it holds which may reasonably be considered to be relevant to that particular member, licensee or potential licensee;

"working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of the United Kingdom under section 1 of the Banking and Financial Dealings Act 1971(**4**).

(**3**) 2007 c.15.
(**4**) 1971 c.80.

PART 2

Regulation of relevant licensing bodies

Notice of non-compliance and 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 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;

(b) that in the opinion of the Secretary of State the relevant licensing body either—

(i) has no system of self-regulation; or

(ii) has a system of self- regulation which does not comply in material respects with the specified criteria; and

(c) that the Secretary of State has notified the relevant licensing body that its system of self-regulation does not comply in material respects with the specified criteria and the relevant licensing body has not amended its system of self-regulation within the period of 49 days from the date of the notification.

(3) In deciding whether the code of practice of a relevant licensing body does comply in material respects with the specified criteria under this regulation or regulation 4, the Secretary of State may have regard to a report produced by a code reviewer.

(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) A notice under paragraph (2)(c) must be given by—

(a) serving a copy on the relevant licensing body; 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.

Effect of a direction

4.—(1) The relevant licensing body must, within 49 days of the date on which a direction under regulation 3 is made, notify to the Secretary of State a code of practice that complies with the specified criteria and that it proposes to adopt in accordance with the direction.

(2) Following receipt of a code of practice notified in accordance with paragraph (1), the Secretary of State shall 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.

(3) Once its code of practice has been approved by the Secretary of State and the approval notified to the relevant licensing body, the body shall within 7 days of notification adopt the approved code of practice and operate its licensing activities in accordance with that code of practice.

Imposition of code of practice

5.—(1) The Secretary of State may impose a code of practice if he—

(a) is satisfied that the code of practice notified under regulation 4(1) does not meet the specified criteria or that the relevant licensing body has failed to adopt an approved code of practice in accordance regulation 4(3);

(b) gives notice to the relevant licensing body of the code of practice to be imposed upon it; and

(c) has considered any representations made by the relevant licensing body in accordance with the notice and not withdrawn.

(2) The notice must—

(a) state the reasons for the proposed refusal of approval for 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 relevant licensing body; and

(c) state the period (not less than 14 days starting with the date of delivery of 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 shall notify the relevant licensing body and give it a written statement of reasons for the decision 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 licensing 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 code reviewer to review and report to the Secretary of State, when requested to do so by the Secretary of State, on the codes of practice adopted by the relevant 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 whom the Secretary of State considers to represent the interests of relevant licensing bodies, licensees, the persons on whose behalf a relevant licensing body is authorised to negotiate or grant licences and the Comptroller.

(3) The code reviewer may serve notice on any relevant licensing body requiring that relevant licensing body to provide information, documents or assistance to the code reviewer for the purposes of a review or report and may copy any information or documents provided in accordance with the notice.

(4) A relevant licensing body shall provide the code reviewer with any information, documents or assistance requested under paragraph (3) within 14 days of receipt of the request.

(5) Any reference in this regulation or in regulation 7 to the provision of information or of a document includes a reference to the provision of a legible and intelligible copy of information recorded otherwise than in legible form.

(6) The Secretary of State may pay the reasonable expenses and allowances of the code reviewer in respect of any work which the Secretary of State requests the code reviewer to carry out under these Regulations.

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 requiring it to provide to the licensing code ombudsman any information, documents or assistance for the purposes of investigating a dispute referred to in paragraph (1) and copy any document or information provided in accordance with the notice.

(4) A relevant licensing body shall provide the licensing code ombudsman with any information, documents or assistance requested under paragraph (3) within 14 days of receipt of the request.

(5) A relevant licensing body shall comply with a determination of the licensing code ombudsman.

(6) The Secretary of State may pay the reasonable expenses and allowances of the licensing code ombudsman in respect of any work which the licensing code ombudsman carries out under these Regulations.

Recovery of fees by the Secretary of State

8.—(1) Subject to paragraph (2), the Secretary of State may require a relevant licensing body to pay to the Secretary of State a fee to reimburse the Secretary of State the cost of administering the operation of these Regulations.

(2) The aggregate amount of fees recovered from the relevant licensing bodies under paragraph (1) must not be more than the cost to the Secretary of State of administering the operation of these Regulations.

(3) The relevant licensing body shall pay the fee within 24 days of the date on which the relevant licensing body is notified of the fee.

PART 3

Information and financial penalties

Secretary of State's powers to request information

9.—(1) The Secretary of State may serve notice on any relevant licensing body requiring it to supply to the Secretary of State for any purpose related to its licensing activity such information as may be specified or described in the notice, and to supply it at a time and place and in a form and manner so specified.

(2) A relevant licensing body shall supply the Secretary of State with information requested under paragraph (1) within 14 days of receipt of the request.

(3) The Secretary of State may, for a purpose described in paragraph (1), copy any document or information provided.

(4) 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.