EXPLANATORY MEMORANDUM TO

THE COPYRIGHT (REGULATION OF RELEVANT LICENSING BODIES) REGULATIONS 2014

2014 No. [XXXX]

1 This explanatory memorandum has been prepared by The Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Relevant licensing bodies manage copyright on behalf of their members and, encouraged by the Government, most have by now put in place self-regulatory codes of practice. The Secretary of State may direct a relevant licensing body to adopt a code that complies with the specified criteria if three circumstances are met. These are that the relevant licensing body is not a micro business; that it has no code of practice or the one that it has does not comply in material respects with the criteria specified in the regulations; and that it has not amended its code of practice within 49 days of being informed by the Secretary of State of the non-compliance. The Secretary of State may then impose a code on a relevant licensing if the body fails to adopt an appropriate code within a further 49 days of having been directed to amend its code. The Regulations also enable the Secretary of State to appoint an independent code reviewer and an ombudsman, and to impose sanctions in the form of financial penalties on the relevant licensing body for certain breaches of the Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 77 and Schedule 22 of the Enterprise and Regulatory Reform Act (2013 c.24) inserted Section116 (5) and Schedule A1 “Regulation of Licensing Bodies” into the Copyright Designs and Patents Act 1988 (“CDPA”). Schedule A1 contains powers that enable the Secretary of State to make regulations concerning relevant licensing bodies.

4.2 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 relevant licensing body , 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. Relevant licensing bodies that operate ECL schemes are given enhanced powers (in being able to manage the rights of non-member right holders), so the adoption of a code of practice, designed to protect rights holders, is a prerequisite.

4.3 These Regulations are being made against the backdrop of the proposed Collective Rights Management Directive ('CRM Directive'), the final text for which is expected to be agreed in February 2014. One of its objectives is to introduce better standards for the operation of all EU collecting societies; to that extent there is some overlap with these Regulations. When it was published in 2012, the domestic policy development that culminated in these Regulations was already well advanced. Adoption of the Directive was by no means guaranteed and, if it were, there would have still have been a delay of up to two years while it was transposed. Any delay to the implementation of these Regulations would have breached the Government's goal to have measures in place by the end of this Parliament. It would also have had a knock on effect on the implementation of secondary legislation to allow UK ECL schemes, planned for October 2014. Therefore, despite the potential for some overlap, these Regulations were progressed as per the original timetable. Assuming the Directive is adopted, the Government will revisit the Regulations as part of the transposition process and make any necessary changes.

5. Territorial Extent and Application

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

6. European Convention on Human Rights

6.1 The Viscount Younger of Leckie has made the following statement regarding Human Rights:

"In my view the provisions of the Copyright (Regulation of relevant licensing bodies) Regulations 2014 are compatible with the Convention rights"

7. Policy background

- ***What is being done and why***

7.1 The relevant licensing bodies, which the Regulations will regulate, are the bodies that copyright owners, also known as right holders, use to grant copyright licences

of their rights and collect royalties on their behalf. These licensing bodies tend to be owned or controlled by their members, the copyright owners, and often have a not-for-profit status. In the UK, they are also referred to as collecting societies. These bodies tend to be monopoly suppliers of copyright licences in a particular area e.g. music or the visual arts, and are an economically significant sector with a turnover of around £1 billion. In recent years, there was an increase in the number of complaints about the conduct of some of these bodies, including heavy-handed licensing tactics and high pressure selling. This attracted some attention in the media and from ministers who were receiving complaints from dissatisfied licensees and some members of collecting societies.

7.2 Licensees, many of them small businesses, usually have no choice to shop elsewhere if dissatisfied, but because their transactions with the relevant licensing bodies are business-to-business, they do not enjoy the protections offered to consumers dealing with monopoly suppliers in other sectors (for example, utility companies). In 2010, the previous administration tried to regulate the relevant licensing bodies with codes of practice, but the clauses, in what is now the Digital Economy Act, were lost in the wash-up when the last general election was called.

7.3 In 2011, Professor Ian Hargreaves' review, 'Digital Opportunity' recommended that collecting societies "should be required by law to adopt codes of practice." This recommendation was broadly accepted by the Government and formed part of its Copyright Consultation, which ended in March 2012.

7.4 Following the consultation the Government published a policy statement in July 2012, stating its intention to bring forward legislation to regulate these licensing bodies. The Government then did this by introducing clauses into the Enterprise and Regulatory Reform Act. In April 2013, the Enterprise and Regulatory Reform Act was enacted giving the Government a power to make secondary legislation to remedy and, where warranted, penalise gaps in self-regulation by the relevant licensing bodies.

7.5 In 2012 the Intellectual Property Office (IPO) also consulted on and published on its website a set of minimum standards[1] for the relevant licensing bodies to use as a basis for self-regulatory codes of practice. The majority of relevant licensing bodies have by now adopted self-regulatory codes. It is intended that the self-regulatory codes will continue in existence even when the Regulations have commenced.

7.6 The specified criteria, which are set out in the Schedule to the Regulations, have substantially the same content as the Government's minimum standards. The Regulations will not be applied to the extent that a relevant licensing body adopts and adheres to a self-regulatory code which is consistent with the minimum standards.

[1] http://www.ipo.gov.uk/hargreaves-minimumstandards.pdf

7.7 In order to preserve the system of self-regulation as much as possible, the Regulations have a three stage process. First, under Regulation 3, the Secretary of State may give notice to a relevant licensing body that its system code of practice does not comply with the specified criteria. The relevant licensing body has 49 days in which to amend its code. If the relevant licensing body does not amend its code, the Secretary of State may direct a relevant licensing body to adopt a code which complies with the specified criteria. Finally, if the relevant licensing body has failed to adopt a code which is consistent with the specified criteria, the Secretary of State may impose a code on the relevant licensing body which complies with the specified criteria. The first two stages leave the relevant licensing body with some discretion as to the exact content of their code.

8. Consultation outcome

8.1 In December 2011 the Government held a three month consultation – the Copyright Consultation – on the implementation of the copyright proposals contained in Professor Ian Hargreaves' review, 'Digital Opportunity.' This included the measures to regulate the relevant licensing bodies with codes of practice. The consultation, to which there were in excess of 450 responses, found that there was wide support from licensees in particular for the policy to regulate the relevant licensing bodies with codes of practice. The relevant licensing bodies, whilst supporting self-regulation, preferred a system that was free of sanctions, but the licensee community almost unanimously favoured sanctions as a way of building confidence in the system.

8.2 Given the extensive consultation on the policy, the consultation on the draft Regulations was a four week technical consultation. There were 18 responses, of which 9 were from the relevant licensing bodies. The responses were technical in nature and related to how the Regulations would work in practice. All the relevant licensing bodies who responded commented that the time period for putting in place a code of practice was too short and would not work in practice. Consequently the draft Regulations were amended to provide for a longer time period. The relevant licensing bodies also objected to the provisions for sanctions against their officers. This provision was not amended because of the overwhelming evidence from the 2012 consultation and the desire of the Government to have robust protection in place for those who deal with the relevant licensing bodies, especially as they often do not have a choice to shop elsewhere.

9. Guidance

9.1 The relevant website pages on the IPO website have been updated with an explanation of the changes. Further updates to the website will take place closer to the implementation of the Regulations, with a more detailed explanation of the changes and guidance material.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be £0.37 Million set up costs and £0.38 Million running costs.

10.2 The impact on the public sector is likely to be in the form of costs related to enforcement. It has not been possible to quantify these costs at present as they will be dependent on the level of future compliance. Regulation 8 provides for the Secretary of State to levy fees on relevant licensing bodies to recover the costs of administering the scheme.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The Regulations apply to small business.

11.2 However, to minimise the impact of the requirements on firms employing up to 10 people, the approach taken is to exempt those who qualify as micro-businesses. This means that a business with fewer than 10 employees and which has a turnover or balance sheet total of less than 2 million Euros per annum will be exempt from implementing the Regulations.

11.3 This is consistent with the current Government moratorium on new domestic regulation for micro-businesses and start-ups, therefore any relevant licensing body meeting the definition of a micro-business (taking into account any relationships with partner enterprises including other licensing bodies) will be exempt. The Government has consulted with the relevant licensing bodies sector which includes some small and micro businesses. The scope of the exemption takes into account the fact that some smaller relevant licensing bodies act as monopoly suppliers to members and licensees, many of whom are themselves small and micro-businesses who may not have a choice to shop elsewhere.

12. Monitoring & review

12.1 The impact of these Regulations will be assessed prior to the transposition of the CRM Directive which is expected to take place in 2016. The CRM Directive contains provisions for the regulation of licensing bodies and conducting a review at this time will enable an assessment to be made of how the domestic regulatory framework is operating and identify any adaptations that might need to be made to comply with the obligations in the Directive.

13. Contact

13.1 Nadia Vally at the Intellectual Property Office can answer any queries regarding the instrument. Tel: 020 7034 2890 or email: nadia.vally@ipo.gov.uk