

5.2. Copyright etc (Amendment) Bill 2013 – Clauses considered

Mr Skelly to move.

The Speaker: We now turn to the Copyright etc (Amendment) Bill and I call on the mover, Hon. Member for Rushen, Mr Skelly.

Mr Skelly: Gura mie eu, Loayreyder.

As outlined in the Second Reading, the purpose of this Bill is to make various amendments to the Copyright Act 1991, the Design Right Act 1991 and the Performers' Protection Act 1996, in order to bring legislation up to date to ensure that the Isle of Man offers intellectual property protection in line with that of the UK and the EU.

Clauses 1 and 2: clause 1 gives the Act its short title; clause 2 gives the Act to be brought into force by order.

Therefore, Loayreyder, I beg to move clauses 1 and 2 stand part of the Bill.

The Speaker: Mr Quayle, Hon. Member for Middle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clauses 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Skelly.

Mr Skelly: Gura mie eu.

Clause 3 amends the Copyright Act 1991 to bring the maximum penalties for some offences into line with those in the UK. As I made clear in the Second Reading of the Bill, normally breach of copyright is only a civil wrong but the increase in maximum fines and custodial sentences will ensure that copyright piracy on a commercial scale can be dealt with appropriately.

Loayreyder, I beg to move that clause 3 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, please.

Mr Skelly: Gura mie eu.

Clause 4 gives additional powers under which a court can order the forfeiture of pirated goods or a master from which infringing copies can be made over and above those available after seizure of, or on a conviction for dealings with, infringing copies.

At the moment, the Copyright Act 1991 enables a court to order the forfeiture or destruction of infringing copies or masters which have been ordered to be handed over either on an application by the copyright owner or on a conviction for an offence or which have been seized by a copyright owner.

The new powers will not be available whenever such articles have come into anyone's possession in the course of investigating for prosecuting certain offences, including offences related to trade descriptions, fraud and theft.

Loayreyder, I beg to move clause 4 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: I put the question that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Skelly: Gura mie eu.

Clause 5 repeals the provisions of the Copyright Act 1991 which limit to 25 years the term of copyright in certain mass-produced artistic works. As a result of the change, these works will enjoy copyright protection for 70 years from the designer's death, which is the term of protection applied to all other copyrighted works.

The clause repeals section 52 of the Copyright Act 1991, which creates the exception. Section 52 applies where an artistic work, following the authorisation of the copyright holder, has been copied by an individual process and marketed anywhere in the world. Twenty-five years after copies of the artistic work were first marketed, the work may be copied by third parties without infringing copyright. With repeal of the clause, such works will receive protection for 70 years.

Clause 5 also repeals section 79(4)(g), which provides a similar exception to the moral right of a designer to be identified as such in schedule 1, paragraph 19, which makes a transitional modification in relation to works existing before the 1991 Act came into force.

Loayreyder, I beg to move that clause 5 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 5 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6, please.

Mr Skelly: Gura mie eu.

Clause 6 extends an exemption which deals with the sometimes overlapping rights of copyright and designs. Designs of objects can attract two separate intellectual property rights: firstly, they are copyright protected; secondly, design can also be registered.

The extension of this existing exemption will mean that a person who uses a design registered in the Isle of Man and the United Kingdom, with the permission of the registered owner, is not treated as infringing any associated copyright in the design. The exemption is extended so as to also cover designs registered at the EU design registry – otherwise known as Community Designs.

Loayreyder, I beg to move that clause 6 stands part of this Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7, please.

Mr Skelly: Gura mie eu, Loayreyder.

Clause 7 removes a duplication in legislation under which procedural rules for the Isle of Man Copyright Tribunal may be made by the Council of Ministers under either the Copyright Act 1991 or the Tribunals Act 2006. In future, the rules will be made under the 2006 Act with a saving for the existing rules made under the 1991 Act.

The Isle of Man Copyright Tribunal is an independent specialist tribunal whose main responsibility is to decide disputes over the terms of licences granted by licensing bodies on behalf of copyright owners. It was created in 1991 in place of the UK Copyright Tribunal, which had previously had jurisdiction on the Isle of Man, and was brought into the common system of tribunal appointments in 2006. Its procedure is laid down by the Copyright Tribunal Rules 1996, made under section 145 of the Copyright Act 1991.

The rules apply, with modifications of the UK Copyright Tribunal Rules 1989, as amended. It should also be noted that the Department intends to bring forward updated Isle of Man Copyright Tribunal Rules, based on the UK Copyright Tribunal Rules 2010, later this year.

Loayreyder, I beg to move that clause 7 stands part of this Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion – clause 7. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Skelly: Gura mie eu, Loayreyder.

Clause 8 concerns unpublished works created prior to 1992. The Copyright Act 1991, which replaced the UK Copyright Act 1956, contains transitional provisions to protect such works. The provisions mean that the works remain in copyright until the end of 2042 – 50 years from the end of 1992.

The provision, however, has absurd effects on older documents. For example, as set out in the explanatory note, a library in possession of an unpublished 13th century manuscript may not publish it until 2043, nor may it copy the manuscript without seeking legal action, except for the use of non-commercial research or private study.

In the United Kingdom, the Enterprise and Regulatory Reform Act 2013 enables the Secretary of State to make regulations reducing the term of copyright in the corresponding provision of the UK Copyright Designs and Patents Act 1988. This clause gives a similar power to the Department of Economic Development so that any changes in the UK can be adopted here.

Loayreyder, I beg to move that clause 8 stands part of this Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 8 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Skelly: Gura mie eu.

Clause 9 gives the Department power to make regulations to introduce a licensing system for so-called orphan works and for what is referred to as extended collective licensing.

Orphan works are copyright works for which the owner cannot be traced. Such works may be held in libraries, archives, museums and galleries but, without the permission of the copyright owner, they are limited in what they can do to make such works available for the public view without threat of legal action.

The UK is introducing a system under which a licensing body can be authorised to license the use of orphan works subject to safeguards for the missing copyright owners; and this clause enables provision to be made for the use of orphan works on the Isle of Man too.

Extended collective licensing allows a streamlined, simplified system to be put in place subject to safeguards for works which have more than one copyright owner. For example, in the case of a film, copyright may be owned by the screenwriter, the producer, the director and the composer of the soundtrack. The agreement of all is required before public performance can take place. As all need to opt into the agreement, this can take time.

The change will enable regulations to be made allowing licences to be granted on behalf of the owners of the copyright in a work except any who opt out.

Loayreyder, I beg to move that clause 9 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 9 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10

Mr Skelly: Gura mie eu, Loayreyder.

Clause 10 removes the need to make orders applying for the provisions of the Copyright Act 1991 to countries that qualify for reciprocal copyright protection. Currently, under the Copyright Act 1991, orders need to be made which specify the countries that qualify for reciprocal copyright protection. Instead, this clause incorporates the countries into the Act, removing the need for such orders.

Loayreyder, I beg to move that clause 10 stands part of this Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: Clause 10. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we have clause 11 and schedule 1.

Mr Skelly: Gura mie eu.

Clause 11 introduces schedule 1. This creates a publication right which gives protection for 25 years to the first publisher for an out of copyright work.

Publication right gives rights broadly equivalent to copyright to a person who publishes for the first time a literary, dramatic, musical or artistic work or a film in which copyright has expired. However, there is one major difference which is that the publication rights only last 25 years from the year of publication of the material, rather than 70 years from the death of the creator in the case of copyright.

It is important to note that the owner of the publication right is the person who first published the unpublished material in which copyright has expired. They will not necessarily be the original owner of the copyright work.

Loayreyder, I beg to move that clause 11 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 11 and schedule 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 12.

Mr Skelly: Gura mie eu, Loayreyder.

Clause 12 simplifies and clarifies the scope of design right, which is the right of a creator of an industrial design – for example, the shape of a car body – to control the exploration of the design.

The protection for designs is clarified in two respects. Firstly, trivial features of designs are excluded by making sure that protection does not extend to *any aspect* of part of an article. It is expected that this will reduce the tendency to overstate claims as to the extent of the rights in a design.

Secondly, protection applies only to original designs and, to be considered original, a design should not be commonplace in the relevant field. It is not certain whether this means commonplace in the Isle of Man or elsewhere and, to remove that confusion, it is provided that it means commonplace in the Isle of Man, other than qualifying countries' designs which are protected in Manx law.

Loayreyder, I beg to move that clause 12 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 12 stands part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13.

Mr Skelly: Gura mie eu.

Clause 13 changes the initial ownership of designs created on commission from another person. Under the Design Right Act 1991, the person by whom the design is commissioned is the first owner of the design right in it. However, in EU regulations the designer is the first owner of the rights in a design created in the EU, otherwise known as Community Design.

To avoid the anomaly of UK design right belonging to one person and Community rights to another, the clause brings the Isle of Man in line with the UK and the EU by making the designer the first owner of design right even where the design is commissioned by another person.

The change also brings the law regarding the initial ownership of designs created on commission from another person into line with that copyright where the copyright for a work created on a commission lies with the original creator, rather than the commissioner.

Loayreyder, I beg to move that clause 13 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 13 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 14, please

Mr Skelly: Gura mie eu.

Clause 14 simplifies and expands the concept of qualification. For a design to be protected the designer or the article made to the design must have connection either with the Isle of Man or with a qualifying country specified in an order.

The revision means that the criterion will be the country where the designer *or* the employer is economically active, or where articles made to the design are first marketed, not the country of which the designer, the employer or the first marketeer is a national or where he is resident.

Loayreyder, I beg to move that clause 14 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 14 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Skelly: Gura mie eu, Loayreyder.

Clause 15. This clause introduces two new exceptions to infringement or unregistered design right.

One for the use of protected designs for experimental or teaching purposes and one which exempts from the infringement action the use of a protected design in a ship or aircraft registered outside the Isle of Man which is temporarily in the Isle of Man.

These mirror exemptions applying to registered designs under the Registered Designs Act 1949 of Parliament and will harmonise with EU regulations.

Loayreyder, I beg to move that clause 15 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 15 stands part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

Mr Skelly: Gura mie eu, Loayreyder.

Clause 16 amends the Performers' Protection Act 1996 so as to increase the maximum penalties for unauthorised dealings with recordings of performances on similar lines to the increases in respect of breaches of copyright made in clause 3.

Loayreyder, I beg to move that clause 16 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 16 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

Mr Skelly: Gura mie eu.

Clause 17 gives additional powers under which a court can order the forfeiture of an illicit recording of a performance over and above those available after seizure of or on conviction for dealings with infringing copies – in other words, pirated copies.

The powers are similar to those conferred in clause 4 in relation to infringing copies and are available whenever such recordings have come into anyone's possession in the course of investigating or prosecuting certain offences, including offences related to trade descriptions, fraud or theft.

An illicit recording is one made without the consent of a performer or, if a record company has an exclusive recording contract, without the company's consent. Recordings made for private purposes do not qualify as illicit recordings.

The Performers' Protection Act 1996 currently enables a court to order the forfeiture or destruction of illicit recordings which have been ordered to be handed over either or on application by the rights owner under section 16 or on a conviction for an offence under section 21, or which have been seized by the rights owner under section 17.

Loayreyder, I beg to move that clause 17 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 17 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 18 and schedule 2.

Mr Skelly: Gura mie eu.

Clause 18 with schedule 2 provides for performers to have artistic, non-commercial rights in relation to their performances, similar to those which authors and directors have in relation to certain copyright works.

These are referred to as 'moral rights' and are concerned with the protection of personality and reputation of the performers. Specifically the rights are: firstly, the right to be identified as a performer; and, secondly, the right to object to derogatory treatment of the performance.

The protection of authors' moral rights was introduced by the Rome revision of the Berne Convention in 1928 and is given effect in Manx law by the Copyright Act 1991. Protection for performers was introduced by the WIPO Performances and Phonograms Treaty (WPPT) in 1996. Authors' moral rights were introduced by a revision of the International Berne Convention in 1928 and are given effect in Manx law by the Copyright Act 1991.

This clause makes provision for performers' moral rights in the Isle of Man for the first time.

Loayreyder, I beg to move that clause 18 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: I beg to second and reserve my remarks, sir.

The Speaker: I put the motion that clause 18 and schedule 2 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

Mr Skelly: Gura mie eu.

Clause 19 makes provision for the licensing of 'orphan rights' and extended collective licensing in relation to performances. This corresponds to the provision made in clause 9 for orphan works and extended collective licensing for copyright works.

Clause 19 amends schedule 1A of the Performers' Protection Act 1996, which deals with the licensing of performers' commercial rights and is based on amendments made to the UK Copyright Designs and Patents Act 1988 by the Enterprise and Regulatory Reform Act 2013.

Loayreyder, I beg to move that clause 19 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, sir. I beg to second and reserve my remarks.

The Speaker: I put the motion that clause 19 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

Mr Skelly: Gura mie eu. Nearly there!

Clause 20, as in the case of copyright and design right, the Performers' Protection Act 1996 includes the concept of qualification. For a performance to be protected it or the performer must have a connection with the Isle of Man, an EU member state, including the United Kingdom, or other qualifying countries specified in an order.

At present, the other qualifying countries are specified in the Performers' Rights (Reciprocal Protection) Order 2003. That Order applies to the Isle of Man a UK order which lists numerous other countries.

New UK orders have been made almost annually since 2003, to reflect the accession of countries to various international conventions, and should in turn have been applied to the Isle of Man. In consequence, Manx law does not afford protection in all these cases required under those conventions. Under this provision, it will no longer be necessary to replace or amend every order, as a list of most of the relevant countries will be incorporated in the Performers' Act 1996.

Just before I move this, Mr Speaker, I would just like to put my thanks on record to Steven Tallach, our Legislation Officer, with this highly technical Bill which is part of a package of intellectual property rights that we are trying to strengthen for the Isle of Man economy. It is especially important for not just the creative industries, but many more emerging industries on the Isle of Man – clean tech, ICT and bio-med, all coming forward in the future. I think this is an important component of that and I just want to put my thanks on record there and also thank my seconder, Mr Quayle.

So with that, I would like to beg to move that clause 20 stands part of the Bill.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: I put the question that clause 20 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Skelly: Mr Speaker, I believe I have informed Hon. Members I do not intend to move clause 21.

The Speaker: You did indeed. My apologies.

In which case, I thank Hon. Members as we close our business for the day. The House will now stand adjourned until the next sitting which will take place in this Chamber at 10 o'clock on 4th February.

The House adjourned at 3.40 p.m.