
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Copyright, Designs and Patents Act 1988 (“the Act”). Article 5(2) (b) of Directive 2001/29 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 (OJ No L167, 22.6.2001. p.10) permits Member States to provide for an exception to the copyright and related rights provided under the Directive in respect of reproductions on any medium made by a natural person for private use for non-commercial ends. The second sub-paragraph of Article 6(4) of the Directive provides that Member States may take appropriate measures to ensure that rightholders make available to the beneficiary of an exception provided for in accordance with Article 5(2)(b) the means of benefiting from that exception, without preventing rightholders from adopting adequate measures (such as technological measures) regarding the number of reproductions which may be taken. These Regulations amend the way in which this exception is implemented in the UK.

Regulation 3 inserts new sections 28B and 296ZEA and new paragraph 1B of Schedule 2 into the Act.

New section 28B provides that an individual may make personal copies of a copyright work (other than a computer program) which is lawfully owned by that individual, provided the copies are made for that individual’s private use, without infringing copyright in the work. Any personal copies must be destroyed if the individual transfers the work from which they were made to another person, unless the copyright owner authorises the transfer of the personal copies to that person. Any personal copy which is not so destroyed or is transferred to another person without the authorisation of the copyright owner shall be treated as an infringing copy for the purposes of the Act. Subsection (10) provides that any term of a contract which prevents or restricts the making of a personal copy in accordance with section 28B is unenforceable.

New section 296ZEA provides a complaints procedure to the Secretary of State where the application of any technology, device or component has the effect of preventing a copyright work from being copied (in whole or in part) or restricting the number of copies which may be made. In the absence of any voluntary measure or agreement by the copyright owner which enables the individual to make personal copies, the Secretary of State may direct the copyright owner to take steps to ensure that the individual has the means of benefiting from section 28B. In deciding whether to give such directions the Secretary of State must consider whether the measure unreasonably prevents or restricts the making of personal copies having regard to the right of the copyright owner to adopt adequate measures limiting the number of copies which may be made and whether other copies of the work are commercially available on reasonable terms in a form which does not prevent or unreasonably restrict the making of personal copies.

New paragraph 1B of Schedule 2 provides an equivalent personal copying exception to that in new section 28B in relation to the copying of a recording of a performance. The making of a copy of a recording of a performance in accordance with paragraph 1B does not infringe the rights conferred by Chapter 2 of Part II of the Act (rights in performances).

Regulation 4 contains consequential amendments to sections 27, 197 and 296ZF of the Act.

Regulation 5(1) and (2) contain a transitional provision which provides that a copy of a work made by an individual prior to commencement of these Regulations will be treated as a personal copy of the work for the purposes of new section 28B if the copy could have been made under section 28B had those provisions been in force at the time the copy was made. Regulation 5(3) and

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(4) make an equivalent transitional provision in relation to copies of recordings which could have been made under paragraph 1B of Schedule 2.

A full impact assessment of the effect that this instrument will have on the cost of business and the voluntary sector is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport, NP10 8QQ and is annexed to the Explanatory Memorandum (together with a transposition note) which is available alongside the instrument on www.legislation.gov.uk.