

Transposition note for 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 (OJ No L 167, 22.6.2001, p.10) (“the Directive”)

The Directive harmonises the basic rights relevant to uses of copyright material in the information society, namely the rights of reproduction and communication to the public (electronic transmission, including digital broadcasting and “on demand” services) and also harmonises the rights of performers in relation to fixations of their performances. It also limits the type and scope of permitted exceptions to these rights and provides legal protection for technological measures used to safeguard rights of copyright owners. The Directive was implemented into UK law by The Copyright and Related Rights Regulations 2003 (SI 2003/2498) (“the 2003 Regulations”) which amended provisions contained in the Copyright, Designs and Patents Act 1988 (“the Act”).

Article 5(2) and (3) of the Directive provide that Member States may provide for exceptions or limitations to the reproduction right, the communication to the public right and the distribution right in the cases set out in those Articles. The 2003 Regulations amended various existing exceptions to copyright contained in the Act in order to comply with the requirements contained in Article 5 of the Directive but did not provide for any new exceptions as permitted under Article 5. The UK has decided to extend the exceptions to copyright (and the related rights of performers in performances) as permitted under Article 5 and these provisions will be transposed into UK law by the following regulations:

- i. The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 (“the Private Copying Regulations”)
- ii. The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 (“the Research Regulations”)
- iii. The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014 (“the Quotation and Parody Regulations”)
- iv. The Copyright and Rights in Performances (Disability) Regulations 2014 (“the Disability Regulations”) and
- v. The Copyright (Public Administration) Regulations 2014 (“the Public Administration Regulations”)

These Regulations amend the Act as set out in the table below. The Department for Business, Innovation and Skills has lead responsibility for implementation of the Directive.

Article of the Directive	Objectives	Implementation in the Regulations	Responsibility (Secretary of State if not specified)
Article 5(2)(b)	Provides for an exception to the reproduction right in respect of reproductions on any medium made by a natural person for private use and for ends which are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work concerned.	Regulations 3(1) and 3(3) of the Private Copying Regulations, which insert section 28B and paragraph 1B of Schedule 2 into the Act.	
Article 6(4) paragraphs 2 and 4	This Article provides that notwithstanding the legal protection against the circumvention of any technological measures provided for under Article 6(1) of the Directive, member states may take appropriate measures to the extent necessary to ensure that rightholders make available to the beneficiary of an exception provided in accordance with Article 5(2)(b) the means of benefiting from the exception, without preventing rightholders from adopting adequate measures regarding the number of reproductions in accordance with those	Regulation 3(2) of the Private Copying Regulations, which inserts section 296ZEA into the Act	

	provisions. However, paragraph 4 provides that these provisions shall not apply to works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.		
Articles 5(2)(b), 5(2)(c) and 5(3)(a)	Article 5(2)(b) permits reproductions for private use as detailed above. Article 5(2)(c) provides for an exception from the reproduction right in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums or by archives, which are not for direct or indirect commercial advantage. Article 5(3)(a) provides for an exception to the reproduction right and the communication to the public right for use for the sole purpose of scientific research as long as the source including the author's name is indicated unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved.	Regulation 3 of the Research Regulations, which amends section 29 of the Act (Research and private study) and inserts section 29A into the Act (Copies for text and data analysis for non-commercial research). Corresponding amendments are made to Schedule 2 in relation to performers' rights.	
Article 5(3)(d)	This Article provides for an exception to the reproduction right and the communication to the public right in respect of quotations for purposes such as criticism and review provided they relate to a work or other subject matter which has already been lawfully made available to the public, that the source, including the author's name is indicated (unless this turns out to be impossible) and that their use is in accordance with fair practice and to the extent required by the specific purpose.	Regulations 3 and 4 of the Quotation and Parody Regulations 2014, which amend section 30 (Criticism, review and news reporting) and paragraph 2 of schedule 2 to the Act.	
Article 5(3)(k)	This Article permits an exception to the reproduction right and the communication to the public right in the case of use for the purpose of caricature, parody or pastiche.	Regulation 5 of the Quotation and Parody Regulations, which inserts section 30A (Caricature, parody and pastiche) into the Act	
Article 5(3)(b)	This Article permits an exception to the reproduction right and the communication to the public right in the case of uses for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability.	Regulations 2 and 3 of the Disability Regulations, which substitute sections 31A (Disabled persons: copies of works for personal use), 31B (Making and supply of accessible copies by authorised bodies), 31BA (Making and supply of intermediate copies by authorised bodies), 31BB (Accessible and intermediate copies: records and notification) and 31F (Sections 31A to 31BB: interpretation and general).	

		Corresponding amendments are made to Schedule 2 in respect of performers' rights.	
Articles 5(2)(c) and 5(3)(a)	Article 5(2)(c) permits exceptions from the reproduction right in respect of specific acts of reproduction made by educational establishments which are not for direct or indirect economic or commercial advantage. Article 5(3)(a) allows exceptions to the reproduction right and communication to the public right in respect of use for the sole purpose of illustration for teaching subject to the requirement that the source be indicated (unless this is impossible) and to the extent justified by the non-commercial purpose to be achieved.	Regulation 4 of the Research Regulation substitutes section 32 (Illustration for teaching), section 35 (Recording by educational establishments of broadcasts) and section 36 (copying and use of extracts of works by educational establishments). Corresponding amendments are made to Schedule 2 in respect of performers' rights.	
Articles 5(2)(c) and 5(3)(n)	Article 5(2)(c) permits an exception to the reproduction right in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums or by archives, which are not for direct or indirect economic or commercial advantage. Article 5(3)(n) allows use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of those establishments of works and other subject matter not subject to purchase or licensing terms which are contained in their collections.	Regulation 5 of the Research Regulations inserts section 40B (Libraries and educational establishments etc: making works available through dedicated terminals) and substitutes section 41 (Copying by librarians: supply of single copies to other libraries), section 42 (Copying by librarians etc: replacement copies of works), section 42A (Copying by librarians: single copies of published works), section 43 (copying by librarians or archivists: single copies of unpublished works) and section 43A (Sections 40A to 43: interpretation). Regulation 6 of those regulations makes corresponding amendments to Schedule 2 in respect of performers' rights.	
Article 5(3)(e)	This Article provides an exception to the reproduction right and the communication to the public right in respect of use to ensure the proper performance or reporting of	Regulation 2 of the Public Administration Regulations amends section 47 (Material	

	administrative, parliamentary or judicial proceedings	open to public inspection or on official register) and section 48 (Material communicated to the Crown in the course of public business) of the Act.	
Article 5(2)(c)	Article 5(2)(c) permits an exception to the reproduction right in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums or by archives, which are not for direct or indirect economic or commercial advantage.	Regulations 7 and 8 of the Research Regulations amend section 61 (Recordings of folk songs) and substitute section 75 (Recording of broadcasts for archival purposes). Corresponding amendments are made to Schedule 2 in respect of performers' rights.	