
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend both the Copyright, Designs and Patents Act 1988 (the “1988 Act”) and the Copyright and Rights in Database Regulations 1997 (the “1997 Regulations”). Article 5(3)(b) of Directive [2001/29/EC](#) (OJ No L167, 22.06.2001, p.10.) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights (the “Infosoc Directive”) permits Member States to provide an exception to the copyright and related rights provided under the Infosoc Directive in the case of uses, for the benefit of disabled persons, which are directly related to their disability and of a non-commercial nature. Directive [2017/1564](#) (OJ No L242, 20.09.2017, p.6.) of the European Parliament and of the Council of 13 September 2017 to approximate the laws of Member States relating to copyright and related rights (“the Directive”) requires Member States to provide exceptions or limitations to copyright and related rights for the benefit of disabled persons who are blind, visually impaired or otherwise print-disabled.

These Regulations amend how the exception permitted under the Infosoc Directive, and required under the Directive, is implemented in the UK.

Regulation 3 amends section 18 of the 1988 Act relating to the act that constitutes an issue to the public of copies of a work under the 1988 Act. The amendment re-implements Article 9 of obligations now expressed in Directive [2006/115/EC](#) (OJ No L376, 27.12.2006, p.28.) of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

Regulations 4 to 8 amend sections 31A to 31F of the 1988 Act. These sections contain exceptions to the act of infringing copyright under the 1988 Act for the purposes of making and supplying (as relevant) accessible copies (defined in section 31F(5)) for the benefit of disabled persons (defined in section 31F(2)). These Regulations make provision for both the repeal and replacement of certain subsections.

Regulation 4 amends section 31A. Subsection (1) is amended to provide that the section applies if the disabled person has lawful access to a copy of the whole or part of the work and if their disability prevents them enjoying the work to substantially the same degree as a person who does not have that disability. Existing sections 31A(2)(c) and (3) are repealed.

Regulation 5 amends section 31B. Subsection (1) is amended and provides that an authorised body may make, communicate, make available, distribute or lend accessible copies of a work for the personal use of disabled persons. New subsection (1A) establishes principles which an authorised body must comply with when making, communicating, making available, distributing or lending an accessible copy. Subsections (2), (3), (4), (6), (7), (8) and (10) are repealed.

Regulation 6 amends section 31BA. Subsection (2) is amended substituting the permitted act of “supply” of the intermediate copy from one authorised body to another for “communicate, making available, distributing or lending”. The further amendment makes it clear that the intermediate copy may only be made, communicated, made available, distributed or lent on a non-profit basis. Subsection (4) is repealed.

Regulation 7 amends section 31BB. This amendment substitutes existing section 31BB for new subsections (1) to (4).

Regulation 8 amends section 31F which sets out provisions relating to the interpretation of sections 31A to 31BB. The definition of a “Disabled person” in subsection (2) is amended and the amendment to subsection (3) ensures that the use of corrective lenses is provided as only one example of the ways that someone may improve their visual impairment to a level that is normally acceptable for reading without a special level or kind of light. Subsection (7) is repealed.

Changes to legislation: There are currently no known outstanding effects for the The Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018. (See end of Document for details)

Regulation 9 updates the legislative reference at section 111(3B) in the 1988 Act from Article 5(1) of Council Regulation (EC) No 1383/2003 (OJ No L 196, 2.8.2003, p.7) concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights to Article 3 of Regulation (EU) No 608/2013 (OJ No L181, 29.06.2013, p.1) of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights.

Regulation 10 amends section 296ZE. Two new definitions for a Marrakesh work and a Marrakesh beneficiary are inserted in subsection (1). New subsection (9A) is inserted. This disapplies subsection (9) where the application of any effective technological protection measure to a Marrakesh work prevents the making of an accessible copy of that work under the disability exceptions in sections 31A, 31B or 31BA and in Schedule 2, paragraphs 3A, 3B or 3C for the benefit of a Marrakesh beneficiary.

Regulations 12 to 16 amend Schedule 2, paragraphs 3A to 3E of the 1988 Act. These provisions contain similar exceptions to sections 31A to 31F relating to rights in performances in relation to recordings of performances in films and sound recordings.

Regulations 18 and 19 amend the 1997 Regulations. Regulation 18 inserts the definition of a Marrakesh beneficiary into the 1997 Regulations by way of a cross-reference to section 296ZE(1) of the 1988 Act. Regulation 19 provides that the database right is not infringed by any act that is for the benefit of a Marrakesh beneficiary if it may be done under sections 31A, 31B or 31BA and in Schedule 2, paragraphs 3A, 3B or 3C of the 1988 Act.

Regulation 20 provides that the Secretary of State must carry out a review of these regulations and publish a report of that review. The first report must be published not later than 12th October 2023. Each subsequent report must be published at intervals not exceeding five years after the first report is published.

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen. A copy of this instrument and the Explanatory Memorandum (together with a transposition note) is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport, NP10 8QQ. The Explanatory Memorandum (together with a transposition note) are also available alongside the instrument on www.legislation.gov.uk.

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