

*Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2018 No. XXXX**

**EXITING THE EUROPEAN UNION  
INTELLECTUAL PROPERTY**

**The Intellectual Property (Copyright and Related  
Rights) (Amendment) (EU Exit) Regulations 2018**

*Made - - - - - \*\*\*  
Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(1)</sup>. In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

**PART 1**

**Introduction**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018.

(2) These Regulations come into force on exit day.

## PART 2

### Amendments to the Copyright, Designs and Patents Act 1988

#### Amendments to the Copyright, Designs and Patents Act 1988

2. The Copyright, Designs and Patents Act 1988(2) is amended in accordance with this Part.
3. In section 6A (safeguards in case of certain satellite broadcasts)(3)—
  - (a) for “an EEA State”, in each place it occurs, substitute “the United Kingdom”;
  - (b) in subsection (2)(a), for “that place” substitute “the United Kingdom”;
  - (c) in subsection (3)(b), for “the place in which he has his principal establishment in the European Economic Area” substitute “the United Kingdom”.
4. In section 12(6) and (8)(c) (duration of copyright in literary, dramatic, musical or artistic works)(4), for “an EEA state”, in each place it occurs, substitute “the United Kingdom”.
5. In section 13A(4) (duration of copyright in sound recordings)(5), for “an EEA state” substitute “the United Kingdom”.
6. In section 13B(7) and (8) (duration of copyright in films)(6), for “an EEA state”, in each place it occurs, substitute “the United Kingdom”.
7. In section 14(3) (duration of copyright in broadcasts)(7), for “an EEA state” substitute “the United Kingdom”.
8. In section 15A(4) (meaning of country of origin)(8)—
  - (a) for sub-paragraph (a) substitute—
    - “(a) if the United Kingdom is one of those countries, the country of origin is the United Kingdom; and”;
  - (b) in sub-paragraph (b), for “if none of those countries is an EEA state” substitute “if the United Kingdom is not one of those countries”.
9. In section 31B(1) and (9) (making and supply of accessible copies by authorised bodies)(9) omit “or another member State of the European Union” in each place it occurs.
10. In section 31BB(4)(b) (accessible and intermediate copies: records and notification)(10), for “another” substitute “a”.
11. Omit section 44B (permitted uses of orphan works)(11).
12. Omit section 76A (certain permitted uses of orphan works)(12).
13. In section 144A(1) (collective exercise of certain rights in relation to cable re-transmission)(13), for “another” substitute “an”.

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(2) 1988 c.48.

(3) Section 6A was inserted by S.I. 1996/2967, amended by S.I. 2003/2498.

(4) Section 12 was substituted by S.I. 1995/3297, amended by the Government of Wales Act 2006 (c.32), section 160(1), Schedule 10, paragraphs 22,23, S.I. 2003/2498, S.I. 2013/1782.

(5) Section 13A was substituted by S.I. 1995/3297, amended by S.I. 2003/2498, S.I. 2013/1782.

(6) Section 13B was substituted by S.I. 1995/3297, amended by S.I. 2003/2498.

(7) Section 14 was substituted by S.I. 1995/3297, amended by S.I. 2003/2498.

(8) Section 15A was inserted by S.I. 1995/3297.

(9) Section 31B was amended by S.I. 2018/995, regulation 5.

(10) Section 31BB was amended by S.I. 2018/995, regulation 7.

(11) Section 44B was inserted by S.I. 2014/2861.

(12) Section 76A was inserted by S.I. 2014/2861.

(13) Section 144A was inserted by S.I. 1996/2967, amended by S.I. 2003/2498, S.I. 2006/1028.

- 14.** In section 154(1) (qualification by reference to author)(**14**)—
- (a) in paragraph (a), omit “a national of another EEA state,”;
  - (b) in paragraphs (b) and (c), omit “or another EEA state”.
- 15.** In section 155(1)(a) (qualification by reference to country of first publication)(**15**) omit “another EEA state,”.
- 16.** In section 156(1)(a) (qualification by reference to place of transmission)(**16**) omit “another EEA state,”.
- 17.** In section 170 (transitional provisions and savings)(**17**) omit subsection (3).
- 18.** In section 172A (meaning of EEA and related expressions)(**18**) omit subsection (2).
- 19.** In section 178 (minor definitions)(**19**), at the appropriate place insert—
- “national of the United Kingdom” means—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas Citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject,
  - (c) a British protected person within the meaning of that Act, or
  - (d) a body incorporated under the law of any part of the United Kingdom.”
- 20.** In section 179 (index of defined expressions)(**20**)—
- (a) in the entry for “the EEA, EEA state and national of an EEA state”, for “, EEA state and national of an EEA state” substitute “and EEA state”;
  - (b) at the appropriate place insert—
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- “national of the United Kingdom                      section 178”.
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- 21.** In section 191(4) (duration of rights)(**21**), for “an EEA state” substitute “the United Kingdom”.
- 22.** In section 206(1) (qualifying countries, individuals and persons)(**22**) omit paragraph (b).
- 23.** Omit Schedule ZA1 (certain permitted uses of orphan works)(**23**).
- 24.** In Schedule 1 (copyright: transitional provisions and savings)(**24**), in paragraph 6(1A), for “another” substitute “an”.

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(14) Section 154 was amended by the British Overseas Territories Act 2002 (c.8), section 2(3), the Intellectual Property Act 2014 (c.18), section 22(1), S.I. 1995/3297, S.I. 2003/2498.

(15) Section 155 was amended by the Intellectual Property Act 2014 (c.18), section 22(2).

(16) Section 156 was amended by the Intellectual Property Act 2014 (c.18), section 22(3), S.I. 2003/2498.

(17) Section 170 was amended by the Enterprise and Regulatory Reform Act 2013 (c.24), section 76.

(18) Section 172A was inserted by S.I. 1995/3297, amended by S.I. 1996/2967, S.I. 2006/1028.

(19) Section 178 was amended by the Northern Ireland Act 1998 (c.47), section 99, Schedule 13, para 8(7), the Scotland Act 1998 (c.46), section 125(1), Schedule 8, para 25(7), the Government of Wales Act 2006 (c.32), section 160(1), Schedule 10, paras 22,29, S.I.1996/2967, S.I. 2003/2498.

(20) Section 179 was amended by the Broadcasting Act 1990 (c.42), section 175(3), the Northern Ireland Act 1998 (c.47), section 99, Schedule 13, paragraph 8(8), the Scotland Act 1998 (c.46), section 125, Schedule 8, para 25(8), the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 7(2), the Government of Wales Act 2006 (c.32), section 160(1), Schedule 10, paragraphs 22,30, S.I. 1992/3233, S.I. 1995/3297, S.I. 1996/2967, S.I. 1997/3032, S.I. 2003/2498, S.I. 2006/1028, S.I. 2014/1372, S.I. 2014/1384.

(21) Section 191 was amended by S.I. 1995/3297, S.I. 1996/2967, S.I. 2003/2498, S.I. 2006/18, S.I. 2013/1782.

(22) Section 206 was amended by the British Overseas Territories Act 2002 (c.8), section 2(3), the Intellectual Property Act 2014 (c.18), section 22(5), (6), (7).

(23) Schedule ZA1 was inserted by S.I. 2014/2861.

(24) Schedule 1 was amended by the British Overseas Territories Act 2002 (c.8), s1(2), the Enterprise and Regulatory Reform Act 2013 (c.24), s 74(1), (3)(b), S.I. 2003/2498, S.I. 2006/1210.

- 25.** In Schedule 2 (rights in performances: permitted acts)(**25**)—
- (a) in paragraph 3B(1) omit “or another member State of the European Union”;
  - (b) in paragraph 3B(8) omit “or in another member State of the European Union”;
  - (c) in paragraph 3D(4)(b), for “another” substitute “a”.

## PART 3

### Amendments to subordinate legislation

#### **Amendments to the Duration of Copyright and Rights in Performances Regulations 1995**

**26.**—(1) The Duration of Copyright and Rights in Performances Regulations 1995(**26**) are amended as follows.

(2) In regulation 16 (duration of copyright: application of new provisions), in paragraph (d) for “another EEA state” substitute “an EEA state”.

(3) In regulation 29 (duration of rights in performances: application of new provisions), in paragraph (d) for “another EEA state” substitute “an EEA state”.

(4) In regulation 36 (construction of references to EEA states)—

- (a) in paragraphs (1) and (2) for “another EEA state”, in each place it occurs, substitute “an EEA state”;
- (b) omit paragraph (3).

#### **Amendments to the Copyright and Related Rights Regulations 1996**

**27.**—(1) The Copyright and Related Rights Regulations 1996(**27**) are amended as follows.

(2) In regulation 2 (interpretation) at the appropriate place insert ““national of the United Kingdom” has the meaning given by section 178 of the Copyright, Designs and Patents Act 1988”.

(3) In regulation 16(4) (publication right)—

- (a) in sub-paragraph (a), after “European Economic Area” insert “or in the United Kingdom”;
- (b) in sub-paragraph (b), after “an EEA state” insert “or a national of the United Kingdom”;
- (c) in the full out words of that paragraph, after “an EEA state” insert “or a national of the United Kingdom”.

(4) In regulation 29(1)(a) (satellite broadcasting: international co-production agreements) after “an EEA state” insert “or a national of the United Kingdom”.

#### **Amendments to the Copyright and Rights in Databases Regulations 1997**

**28.**—(1) The Copyright and Rights in Databases Regulations 1997(**28**) are amended as follows.

(2) In regulation 12(1) (interpretation) at the appropriate place insert ““national of the United Kingdom” has the meaning given by section 178 of the 1988 Act”.

(3) In regulation 18 (qualification for database right)—

- (a) in paragraph (1)—

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(25) Schedule 2 was amended by [S.I. 2018/995](#), regulations 12 to 16.

(26) [S.I. 1995/3297](#), amended by [S.I. 2006/1028](#), [S.I. 2016/1210](#).

(27) [S.I. 1996/2967](#), amended by [S.I. 2003/2498](#), [S.I. 2006/1028](#).

(28) [S.I. 1997/3032](#), amended by [S.I. 2003/2501](#); there are other amending instruments but none is relevant.

- (i) for “the EEA” substitute “the United Kingdom”;
- (ii) in sub-paragraph (a), for “an EEA state” substitute “the United Kingdom”;
- (iii) in sub-paragraphs (b) and (c), for “an EEA state” substitute “any part of the United Kingdom”;
- (b) in paragraph (2), for “the EEA” and for “an EEA state”, in each place it occurs, substitute “the United Kingdom”;
- (c) in paragraph (4), omit sub-paragraph (a).

#### **Amendments to the Artist’s Resale Right Regulations 2006**

- 29.**—(1) The Artist’s Resale Right Regulations 2006(**29**) are amended as follows.
- (2) In regulation 2 (interpretation)—
    - (a) omit the definition of “EEA state”;
    - (b) at the appropriate place insert ““national of the United Kingdom” has the meaning given by section 178 of the Copyright, Designs and Patents Act 1988”.
  - (3) In regulation 10 (requirements as to nationality), in paragraph (a) for “an EEA state” and for “EEA states” substitute “the United Kingdom”.
  - (4) In regulation 17 (review of regulations) omit paragraph (2).

#### **Amendments to the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014**

**30.** In regulation 5(1)(d) of the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014(**30**) (application for authorisation), for “European Economic Area” substitute “the United Kingdom”.

#### **Amendments to the Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014**

- 31.** In regulation 4 of the Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014(**31**) (diligent search)—
- (a) in paragraph (3)—
    - (i) in sub-paragraph (a) omit “and the relevant databases maintained by the Office for Harmonization in the Internal Market”;
    - (ii) in sub-paragraph (b) omit “or databases”;
  - (b) in paragraph (5) omit sub-paragraph (b).

#### **Amendments to the Collective Management of Copyright (EU Directive) Regulations 2016**

- 32.**—(1) The Collective Management of Copyright (EU Directive) Regulations 2016(**32**) are amended as follows.
- (2) In regulation 2(1) (interpretation and application), in the definition of “multi-territorial licence”, for “more than one member State” substitute “the United Kingdom and at least one member State”.

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(29) S.I. 2006/346, amended by S.I. 2009/2792, S.I. 2011/2873.

(30) S.I. 2014/2588, amended by S.I. 2016/221.

(31) S.I. 2014/2863.

(32) S.I. 2016/221.

(3) In regulation 4 (particular obligations of collective management organisations in relation to right holders), in paragraph (a) for “member State” substitute “country”.

(4) In regulation 15(3) (licensing), for “a member State” substitute “the United Kingdom”.

(5) In regulation 22(2) (application), for “Articles 101 and 102 of the Treaty on the Functioning of the European Union” substitute “Part I of the Competition Act 1998”.

(6) In regulation 51 (review) omit paragraph (2).

### **Amendments to the Copyright and Performances (Application to Other Countries) Order 2016**

**33.** In regulation 1 of the Copyright and Performances (Application to Other Countries) Order 2016(**33**) (citation, commencement, interpretation and revocation), in paragraph (2), in the definition of “relevant country”, for “another EEA state” substitute “an EEA state”.

### **Revocation of the Portability of Online Content Services Regulations 2018**

**34.** The Portability of Online Content Services Regulations 2018 are revoked(**34**).

### **Amendments to the Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018**

**35.** Omit regulation 20(4) of the Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018 (review)(**35**).

## **PART 4**

### **Amendments to retained direct EU legislation**

#### **Amendments to Council Regulation (EU) 2017/1563**

**36.**—(1) Council Regulation (EU) 2017/1563 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled is amended as follows.

(2) Omit Article 1 (subject matter and scope).

(3) For Article 2(4) substitute—

““authorised entity established in a Member State” means an entity that falls within the definition of an authorised body in section 31F(6) of the Copyright, Designs and Patents Act 1988”.

(4) In Article 3 (export of accessible format copies to third countries),—

(a) for “a Member State” substitute “the United Kingdom”;

(b) for “the national legislation adopted pursuant to Directive (EU) 2017/1564” substitute “the Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018”.

(5) In Article 4 (import of accessible format copies from third countries),—

(a) for “a Member State” substitute “the United Kingdom”;

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(33) [S.I. 2016/1219](#).

(34) [S.I. 2018/249](#).

(35) [S.I. 2018/995](#).

- (b) for “the national legislation adopted pursuant to Directive (EU) 2017/1564” substitute “the Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018”.
- (6) In Article 5 (obligations of authorised entities) for “a Member State” substitute “the United Kingdom” in all places where it appears.
- (7) In Article 6 (protection of personal data) for “Directives [95/46/EC](#)(**36**) and [2002/58/EC](#)” substitute “Regulation (EU) 2016/679 and the Privacy and Electronic Communications (EC Directive) Regulations 2003”.
- (8) Omit Article 7 (review).
- (9) Omit Article 8 (entry into force and application).
- (10) At the end omit the sentence starting “This Regulation shall be binding”.

### **Revocations**

**37.** Regulation (EU) No 2017/1128 of the European Parliament and of the Council of 14th June 2017 on cross-border portability of online content services in the internal market is revoked.

## **PART 5**

### **Transitional provisions and savings**

#### **Transitional provisions and savings**

**38.** The amendments made by these Regulations do not apply to any database in which a database right exists under the Copyright and Rights in Databases Regulations 1997 prior to exit day.

Signed by authority of the Secretary of State for

Date

*Name*  
Minister of State  
Department for Business, Energy and Industrial  
Strategy

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(36) [Directive 95/46/EC](#) was repealed by Article 94.1 of Regulation 2016/679. Under Article 94.2 of that Regulation references to [Directive 95/46/EC](#) shall be construed as references to that Regulation.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (c), (d) and (g) of section 8(2)) arising from the withdrawal of the UK from the European Union. These Regulations make amendments to legislation in the field of copyright and related rights and, in particular, amend the Copyright, Designs and Patents Act 1988, subordinate legislation and retained direct EU legislation. These Regulations also revoke the Portability of Online Content Services Regulations 2018 and Regulation (EU) No 2017/1128 of the European Parliament and of the Council of 14th June 2017 on cross-border portability of online content services in the internal market.

A full impact assessment of the effect of this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport NP20 8QQ and is available with the explanatory memorandum alongside this instrument on the Legislation UK website [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies have also been placed in the libraries of both Houses of Parliament.