

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. XXXX

COPYRIGHT

RIGHTS IN PERFORMANCES

**The Copyright and Rights in Performances (Disability)
Regulations 2014**

Made

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to matters relating to copyright and rights in performances(b).

In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Copyright and Rights in Performances (Disability) Regulations 2014 and come into force at 00.01 on 1st June 2014.
- (2) In these Regulations “the 1988 Act” means the Copyright, Designs and Patents Act 1988(c).

Amendments to Chapter 3 of Part 1 of the 1988 Act

- 2.—(1) Chapter 3 of Part 1 of the 1988 Act is amended as follows.
- (2) For the cross-heading preceding section 31A(d), substitute “Disability”.
- (3) For section 31A substitute—

(a) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule.

(b) S.I. 1992/707 and S.I. 1993/595.

(c) 1988 c.48.

(d) Section 31A was inserted into the 1988 Act by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 1 as amended by S.I. 2003/2498, Schedule 1, Part 2 paragraph 27.

“31A Disabled persons: copies of works for personal use

(1) This section applies if—

- (a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a work, and
- (b) the person’s disability prevents the person from enjoying the work to the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the work referred to in subsection (1)(a) does not infringe copyright if—

- (a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,
- (b) the copy is made for the disabled person’s personal use, and
- (c) the same kind of accessible copies of the work are not commercially available on reasonable terms by or with the authority of the copyright owner.

(3) If a person makes an accessible copy under this section on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.

(4) Copyright is infringed by the transfer of an accessible copy of a work made under this section to any person other than—

- (a) a person by or for whom an accessible copy of the work may be made under this section, or
- (b) a person who intends to transfer the copy to a person falling within paragraph (a), except where the transfer is authorised by the copyright owner.

(5) An accessible copy of a work made under this section is to be treated for all purposes as an infringing copy if it is held by a person at a time when the person does not fall within subsection (4)(a) or (b).

(6) If an accessible copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing, and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(7) In this section “dealt with” means sold or let for hire or offered or exposed for sale or hire.”.

(4) For section 31B(a) substitute—

“31B Making and supply of accessible copies by authorised bodies

(1) If an authorised body has lawful possession of a copy of the whole or part of a published work, the body may, without infringing copyright, make and supply accessible copies of the work for the personal use of disabled persons.

(2) But subsection (1) does not apply if the same kind of accessible copies of the work are commercially available on reasonable terms by or with the authority of the copyright owner.

(3) If an authorised body has lawful access to or lawful possession of the whole or part of a broadcast or a copy of a broadcast, the body may, without infringing copyright—

- (a) in the case of a broadcast, make a recording of the broadcast, and make and supply accessible copies of the recording or of any work included in the broadcast, and
- (b) in the case of a copy of a broadcast, make and supply accessible copies of that copy or of any work included in the broadcast,

(a) Section 31B was inserted into the 1988 Act by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 2 as amended by S.I. 2003/2498, Schedule 1, Part 2, paragraph 22.

for the personal use of disabled persons.

(4) But subsection (3) does not apply if the same kind of accessible copies of the broadcast, or of any work included in it, are commercially available on reasonable terms by or with the authority of the copyright owner.

(5) For the purposes of subsections (1) and (3), supply “for the personal use of disabled persons” includes supply to a person acting on behalf of a disabled person.

(6) An authorised body which is an educational establishment conducted for profit must ensure that any accessible copies which it makes under this section are used only for its educational purposes.

(7) An accessible copy made under this section must be accompanied by—

- (a) a statement that it is made under this section, and
- (b) a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(8) If an accessible copy is made under this section of a work which is in copy-protected electronic form, the accessible copy must, so far as is reasonably practicable, incorporate the same or equally effective copy protection (unless the copyright owner agrees otherwise).

(9) An authorised body which has made an accessible copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under this section for the purposes of enabling that other body to make accessible copies of the work.

(10) If an authorised body supplies an accessible copy it has made under this section to a person or authorised body as permitted by this section and charges the person or body for it, the sum charged must not exceed the cost of making and supplying the copy.

(11) If an accessible copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing, and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(12) In this section “dealt with” means sold or let for hire or offered or exposed for sale or hire.

31BA Making and supply of intermediate copies by authorised bodies

(1) An authorised body which is entitled to make an accessible copy of a work under section 31B may, without infringing copyright, make a copy of the work (“an intermediate copy”) if this is necessary in order to make the accessible copy.

(2) An authorised body which has made an intermediate copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under section 31B for the purposes of enabling that other body to make accessible copies of the work.

(3) Copyright is infringed by the transfer of an intermediate copy made under this section to a person other than another authorised body as permitted by subsection (2), except where the transfer is authorised by the copyright owner.

(4) If an authorised body supplies an intermediate copy to an authorised body under subsection (2) and charges the body for it, the sum charged must not exceed the cost of making and supplying the copy.

31BB Accessible and intermediate copies: records and notification

(1) An authorised body must keep a record of—

- (a) accessible copies it makes under section 31B,
- (b) intermediate copies it makes under section 31BA, and

- (c) the persons to whom such copies are supplied.
- (2) An authorised body must allow the copyright owner or a person acting for the copyright owner, on giving reasonable notice, to inspect at any reasonable time—
- (a) records kept under subsection (1), and
 - (b) records of copies made under sections 31B and 31C as those sections were in force before the coming into force of these Regulations.
- (3) Within a reasonable time of making an accessible copy under section 31B, an authorised body must—
- (a) notify any body which—
 - (i) represents particular copyright owners or owners of copyright in the type of work concerned, and
 - (ii) has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it, or
 - (b) if there is no such body, notify the copyright owner (unless it is not reasonably possible to ascertain the name and address of the copyright owner).”.
- (5) For section 31F(a) substitute—

“31F Sections 31A to 31BB: interpretation and general

- (1) This section supplements sections 31A to 31BB and includes definitions.
- (2) “Disabled person” means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to the same degree as a person who does not have that impairment, and “disability” is to be construed accordingly.
- (3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.
- (4) An “accessible copy” of a copyright work means a version of the work which enables the fuller enjoyment of the work by disabled persons.
- (5) An accessible copy—
 - (a) may include facilities for navigating around the version of the work, but
 - (b) must not include any changes to the work which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.
- (6) “Authorised body” means—
 - (a) an educational establishment, or
 - (b) a body that is not conducted for profit.
- (7) The “supply” of a copy includes making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.
- (8) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of section 31A, 31B or 31BA, would not infringe copyright, that term is unenforceable.”.

Amendments to Schedule 2 to the 1988 Act

- 3.** After paragraph 3 of Schedule 2 to the 1988 Act, insert—

“Disabled persons: copies of recordings for personal use

- 3A.—(1)** This paragraph applies if—

(a) Section 31F was inserted into the 1988 Act by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 6.

(a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a recording of a performance, and

(b) the person's disability prevents the person from enjoying the recording to the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the recording referred to in subparagraph (1)(a) does not infringe the rights conferred by this Chapter if—

(a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,

(b) the copy is made for the disabled person's personal use, and

(c) the same kind of accessible copies of the recording are not commercially available on reasonable terms by or with the authority of the rights owner.

(3) If a person makes an accessible copy under this paragraph on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.

(4) The rights conferred by this Chapter are infringed by the transfer of an accessible copy of a recording made under this paragraph to any person other than—

(a) a person by or for whom an accessible copy of the recording may be made under this paragraph, or

(b) a person who intends to transfer the copy to a person falling within paragraph (a), except where the transfer is authorised by the rights owner.

(5) An accessible copy of a recording made under this paragraph is to be treated for all purposes as an illicit recording if it is held by a person at a time when the person does not fall within sub-paragraph (4)(a) or (b).

(6) If an accessible copy of a recording made under this paragraph is subsequently dealt with—

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

Making and supply of accessible copies by authorised bodies

3B.—(1) If an authorised body has lawful possession of or lawful access to a copy of the whole or part of a recording of a performance (including a recording of a performance included in a broadcast), the body may, without infringing the rights conferred by this Chapter, make and supply accessible copies of the recording for the personal use of disabled persons.

(2) If an authorised body has lawful access to the whole or part of a broadcast, the body may, without infringing the rights conferred by this Chapter, make a recording of the broadcast, and make and supply accessible copies of the recording, for the personal use of disabled persons.

(3) But sub-paragraphs (1) and (2) do not apply if the same kind of accessible copies of the recording, or of the broadcast, are commercially available on reasonable terms by or with the consent of the rights owner.

(4) For the purposes of sub-paragraphs (1) and (2), supply “for the personal use of disabled persons” includes supply to a person acting on behalf of a disabled person.

(5) An authorised body which is an educational establishment conducted for profit must ensure that any accessible copies which it makes under this paragraph are used only for its educational purposes.

(6) An accessible copy made under this paragraph must be accompanied by a statement that it is made under this paragraph, unless it is accompanied by an equivalent statement in accordance with section 31B(7).

(7) If an accessible copy is made under this paragraph of a recording which is in copy-protected electronic form, the accessible copy must, so far as is reasonably practicable, incorporate the same or equally effective copy protection (unless the rights owner agrees otherwise).

(8) An authorised body which has made an accessible copy of a recording under this paragraph may supply it to another authorised body which is entitled to make accessible copies of the recording under this paragraph for the purposes of enabling that other body to make accessible copies of the recording.

(9) If an authorised body supplies an accessible copy it has made under this paragraph to a person or authorised body as permitted by this paragraph and charges the person or body for it, the sum charged must not exceed the cost of making and supplying the copy.

(10) If an accessible copy of a recording made under this paragraph is subsequently dealt with—

- (a) it is to be treated as an illicit recording for the purposes of that dealing, and
- (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

Making and supply of intermediate copies by authorised bodies

3C.—(1) An authorised body which is entitled to make an accessible copy of a recording of a performance under paragraph 3B may, without infringing the rights conferred by this Chapter, make a copy of the recording (“an intermediate copy”) if this is necessary in order to make the accessible copy.

(2) An authorised body which has made an intermediate copy of a recording under this paragraph may supply it to another authorised body which is entitled to make accessible copies of the recording under paragraph 3B for the purposes of enabling that other body to make accessible copies of the recording.

(3) The rights conferred by this Chapter are infringed by the transfer of an intermediate copy made under this paragraph to a person other than another authorised body as permitted by sub-paragraph (2), except where the transfer is authorised by the rights owner.

(4) If an authorised body supplies an intermediate copy to an authorised body under sub-paragraph (2) and charges the body for it, the sum charged must not exceed the cost of making and supplying the copy.

Accessible and intermediate copies: records

3D.—(1) An authorised body must keep a record of—

- (a) accessible copies it makes under paragraph 3B,
- (b) intermediate copies it makes under paragraph 3C, and
- (c) the persons to whom such copies are supplied.

(2) An authorised body must allow the rights owner or a person acting for the rights owner, on giving reasonable notice, to inspect the records at any reasonable time.

Paragraphs 3A to 3D: interpretation and general

3E.—(1) This paragraph supplements paragraphs 3A to 3D and includes definitions.

(2) “Disabled person” means a person who has a physical or mental impairment which prevents the person from enjoying a recording of a performance to the same degree as a person who does not have that impairment, and “disability” is to be construed accordingly.

(3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.

(4) An “accessible copy” of a recording of a performance means a version of the recording which enables the fuller enjoyment of the recording by disabled persons.

(5) An accessible copy—

- (a) may include facilities for navigating around the version of the recording, but
 - (b) must not include any changes to the recording which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.
- (6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of paragraph 3A, 3B or 3C, would not infringe any right conferred by this Chapter, that term is unenforceable.
- (7) “Authorised body” and “supply” have the meaning given in section 31F, and other expressions used in paragraphs 3A to 3D but not defined in this paragraph have the same meaning as in sections 31A to 31BB.”.

Consequential amendments etc

4. The Schedule (which contains amendments consequential on the amendments made by regulations 2 and 3, repeals, revocation and saving provisions) has effect.

Name
 Parliamentary Under Secretary of State for Business, Innovation and Skills
 Department for Business, Innovation and Skills
 Date

SCHEDULE

Regulation 4

CONSEQUENTIAL AMENDMENTS, REPEALS, REVOCATION AND SAVING PROVISIONS

Consequential amendments

- 1.** In section 27(6) of the 1988 Act **(a)**(meaning of infringing copy)—
 - (a) for the entry relating to section 31A(6) and (9), substitute—
“section 31A(5) and (6) (disabled persons: copies of works for personal use),”,
 - (b) for the entry relating to section 31B(9) and (10), substitute—
“section 31B(11) (making and supply of accessible copies by authorised bodies),”, and
 - (c) omit the entry relating to section 31C(2).
- 2.** In section 143 of the 1988 Act**(b)**—
 - (a) in subsection (1), omit paragraph (d), and
 - (b) in subsection (3), omit “, 74”.
- 3.** In section 179 of the 1988 Act (index of defined expressions for the purposes of Part 1 of the 1988 Act)**(c)**—
 - (a) for the entry in the table relating to “accessible copy”, substitute—
“accessible copy (in sections 31A to 31F) section 31F(4)”,
 - (b) insert in alphabetical order in the table each of the following entries—
“authorised body (in sections 31B to 31BB) section 31F(6)”

-
- (a)** Section 27(6) was amended by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 7; there are other amendments but none are relevant.
 - (b)** Section 143(1)(d) was amended by S.I. 2003/2498, Schedule 2.
 - (c)** Section 179 was amended by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 7; there are other amendments but none are relevant.

“disabled person (in sections 31A to 31F) section 31F(2) and (3)”

“supply (in sections 31B to 31BB) section 31F(7)”

and

(c) omit the references to “approved body” and “visually impaired person”.

4. In section 197(5) of the 1988 Act (meaning of illicit recording)(a) insert in the proper place in the list—

“paragraph 3A(5) or (6) or 3B(10) (accessible copies of recordings made for disabled persons)”.

5. In section 212 of the 1988 Act (index of defined expressions for the purposes of Part 2 of the 1988 Act)(b) insert in alphabetical order in the table each of the following entries—

“accessible copy (in paragraphs 3A to 3E of Schedule 2) paragraph 3E(4) of Schedule 2”

“disabled person (in paragraphs 3A to 3E of Schedule 2) paragraph 3E(2) and (3) of Schedule 2 ”.

6. In Schedule 2A to the 1988 Act (licensing of performers’ rights), in paragraph 16(1)(c), omit “or 20” and “, provision of sub-titled copies of broadcast”.

7.—(1) Schedule 5A to the 1988 Act (permitted acts to which section 296ZE applies)(d) is amended as follows.

(2) In Part 1—

- (a) in the entry relating to section 31A, for “(making a single accessible copy for personal use)”, substitute “(disabled persons: copies of works for personal use)”,
- (b) in the entry relating to section 31B, for “(multiple copies for visually impaired persons)”, substitute “(making and supply of accessible copies by authorised bodies)”,
- (c) for the entry relating to section 31C substitute—
“section 31BA (making and supply of intermediate copies by authorised bodies)”, and
- (d) omit the entry relating to section 74.

(3) In Part 2—

- (a) insert into the list in numerical order the following entries—
“paragraph 3A of Schedule 2 (disabled persons: copies of recordings for personal use)”,
“paragraph 3B of Schedule 2 (making and supply of accessible copies by authorised bodies) ”, and
“paragraph 3C of Schedule 2 (making and supply of intermediate copies by authorised bodies)”, and
- (b) omit the entry relating to paragraph 20 of Schedule 2.

(a) Section 197(5) was amended by S.I. 2003/2498, regulations 20(4) and Schedule 2, and S.I. 2006/18, paragraph 8 of the Schedule.

(b) Section 212 was amended by S.I. 1995/3297, regulations 9(6) and 11(4), S.I.1996/2967, regulations 20(4) and 21(6), S.I. 2003/2498, Schedule 1, Part 1, paragraph 15(6) and Schedule 2, S.I.2006/18, paragraph 7 of the Schedule and S.I. 2006/1028, Schedule 2, paragraph 13.

(c) Schedule 2A was inserted into the Act by the Copyright and Related Rights Regulations 1996 (S.I. 1996/2967), regs 4 and 22(2) and paragraph 16(1) was amended by the Copyright and Related Rights Regulations 2003 (2003/2498), regulation 2(1), Sch 1, Part 1, paras 1 and 17.

(d) Schedule 5A was inserted into the Act by the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), regulations 3 and 24(2).

Repeals and revocations

8. The enactments listed in column 1 of the Table are repealed or revoked to the extent specified in column 2.

Table

| <i>Enactment</i> | <i>Extent of repeal or revocation</i> |
|---|--|
| The Copyright, Designs and Patents Act 1988 | Sections 31C to 31E(a) Section 74 Paragraph 20 of Schedule 2 |
| The Copyright (Visually Impaired Persons) Act 2002(b) | The whole Act |
| The Copyright and Related Rights Regulations 2003(c) | Regulation 23 Paragraph 22 of Schedule 1 |
| The Performances (Moral Rights, etc.) Regulations 2006(d) | In paragraph 9(2) of the Schedule, the entry “paragraph 20(1) of Schedule 2” |

Saving provisions

9. Section 31F of the 1988 Act, as in force immediately before the commencement of these Regulations, continues to have effect for the purposes of regulation 26 of the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (reader access to relevant material: visually impaired persons)(e).

(a) Sections 31C to 31E were inserted into the 1988 Act by sections 3 to 5 of the Copyright (Visually Impaired Persons) Act 2002 (c.33).
(b) 2002 c.33.
(c) S.I. 2003/2498.
(d) S.I. 2006/18.
(e) S.I. 2013/777.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Copyright, Designs and Patents Act 1988 (“the Act”). Article 5(3)(b) of 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 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 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. These Regulations amend the way in which this exception is implemented in the UK.

These Regulations make provision for the repeal and replacement of the subject matter of sections 31A to 31F and 74 of the Act which relate to the provision of copyright works to visually impaired persons and subtitled broadcasts. Regulation 2 inserts into the Act sections 31A, 31B, 31BA, 31BB and 31F. These sections make expanded provision for the supply of copies of modified copyright works to disabled persons generally rather than just disabled persons who are visually impaired or those who require subtitled broadcasts. Some of the requirements of the repealed provisions are not carried through into the new provisions, in particular those relating to licensing schemes contained in old section 31D and the powers conferred on the Secretary of State to make orders to disapply section 31B which were contained in section 31E. Section 31A makes provision for the making and supply to a disabled person of accessible copies (as defined by section 31F(4)) of a copyright work where that person has lawful possession or use of a copy of the work and accessible copies are not commercially available. Sections 31B, 31BA and 31BB make provision for the making and supply by authorised bodies (defined in section 31F(6) as an educational establishment or a body that is not conducted for profit) of accessible copies of broadcasts and other types of copyright work for disabled persons generally, where such copies are not commercially available.

Regulation 3 makes provision for similar exceptions relating to rights in performances in relation to recordings of performances in films and sound recordings.

Regulation 4 and the Schedule make provision for consequential amendments, repeals, revocations and saving provisions.

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.

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ISBN 978-0-11-111269-4

A standard linear barcode representing the ISBN number 978-0-11-111269-4.

£5.75

UK2014032420 03/2014 19585

<http://www.legislation.gov.uk/id/ukdsi/2014/978011112694>