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## EXPLANATORY NOTE

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

These Regulations implement the provisions of Council Directive No.91/250/EEC (O.J. No. L122, 17.5.91, page 42) (“the Directive”) on the legal protection of computer programs.

The Copyright, Designs and Patents Act 1988 (“the Act”) currently makes provision for the protection of copyright in computer programs. The Directive harmonises the laws of the member States relating to the protection of computer programs and includes matters for which the Act makes no specific provision or makes different provision. These Regulations amend and modify the Act in order to properly align its provisions with those of the Directive. In particular the Regulations—

- (a) introduce modifications of the definition of literary work by including preparatory design material (regulation 3) and modify the meaning of adaptation and translation in relation to computer programs (regulation 5);
- (b) modify the meaning of “issues to the public of copies” and “infringing copy” so as to strengthen the distribution rights of copyright owners in the United Kingdom subject to exhaustion of rights inside the European Economic Community (regulations 4 and 6);
- (c) remove certain acts relating to computer programs from the general application of the fair dealing provision in section 29 (regulation 7);
- (d) introduce new sections 50A, 50B and 50C (regulation 8) containing specific exceptions to the exclusive rights of the copyright owner in favour of a lawful user—
  - (i) permitting the making of a back up copy (new section 50A(1));
  - (ii) defining a lawful user (new section 50A(2));
  - (iii) permitting limited decompilation of a computer program (new section 50B(1)) subject to compliance with certain conditions (new section 50B(2) and (3));
  - (iv) permitting restricted amounts of copying and adapting for lawful use, including for error correction (except where otherwise provided for) (new section 50C);
- (e) introduce an amendment to section 296 extending the category of persons against whom remedies may be sought under that section in respect of dealing in devices designed to circumvent copy-protection for the purpose of making infringing copies (regulation 10); and
- (f) introduce a new section 296A which renders void any term in an agreement which seeks to prohibit or restrict the doing of any of the acts permitted under sections 50A and 50B or the use of any device or means to observe the functioning of a computer program (regulation 11).

These Regulations come into force on 1st January 1993. The provisions extending or diminishing the restricted or permitted acts (as the case may be) relating to copyright in computer programs apply to all computer programs created prior to or on or after that date. However, they are to be without prejudice to any acts concluded or rights acquired before 1st January 1993 (regulation 12).