
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive [2001/29/EC](#) of the European Parliament and of the Council of 22nd May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (O.J. No L167, 22.6.2001, p.10) (“the Directive”) which provides for a general and flexible legal framework at Community level in order to foster the development of the information society in the European Community. In particular, the Directive harmonises the basic rights relevant to uses of copyright material in the information society and e-commerce, namely the rights of reproduction (copying) and communication to the public (electronic transmission, including digital broadcasting and “on-demand” services). It also limits the type and scope of permitted exceptions to these rights and provides legal protection for technological measures used to safeguard rights and identify and manage copyright material. These Regulations also adjust the implementation of Council Directive [91/250/EEC](#) on the legal protection of computer programs (O.J. No L122, 17.5.1991, p.42) so far as is necessary in consequence of amendments required by the Directive, and take account of the amendments required by the Directive to Council Directive [92/100/EEC](#) on rental and lending right and on certain rights related to copyright in the field of intellectual property (O.J. No. L346, 27.11.1992, p.61) and Council Directive [93/98/EEC](#) harmonising the term of protection of copyright and certain related rights (O.J. No L290, 24.11.1993, p.9).

The Copyright, Designs and Patents Act 1988 (“the Act”) already provides protection similar to many of the obligations contained in the Directive. These Regulations amend the Act insofar as its provisions do not conform or comply with the Directive and regarding matters that are related to or consequential upon these obligations. In particular, these Regulations—

- (a) redefine the meaning of “broadcast” in section 6 of the Act, mainly by subsuming within that definition cable programmes sent for simultaneous reception by members of the public or transmitted at a time determined by the person making the transmission for presentation to the public, and by stating expressly that, save for some exceptions, internet transmissions are not broadcasts for the purposes of the Act (regulations 4 and 5);
- (b) redefine in section 20 of the Act, the exclusive right granted to the copyright owner to control broadcasting a work or including it in a cable programme service to provide more transparently and with greater certainty that the copyright owner has the right to control any communication to the public by electronic transmission, including by means of a broadcast, but also in respect of the making available to the public of works in such a way that members of the public may access them from a place and at a time individually chosen by them, as required by Article 3 of the Directive (regulation 6). A new exclusive right, formerly largely within the scope of a remuneration right, is given to performers to control the making available to the public in this way of recordings of their performances, as required by Article 3(2) (the making available right) (regulation 7);
- (c) amend various sections in Chapter 3 of Part 1 of the Act (acts permitted in relation to copyright works) to comply with the regime of compulsory and permitted areas for exceptions to copyright contained in Article 5 of the Directive, and in certain cases to take account of new obligations arising from the application of the ‘three-step’ test that is applied by Article 5(4) to all the permitted areas for exceptions set out in Article 5 and by Article 11(1) to limitations to rights permitted by Article 10 of Council Directive [92/100/EEC](#). Where appropriate, similar amendments are made to Schedule 2 to the Act (rights in performances: permitted acts) (regulations 8 to 23);

Changes to legislation: *The Copyright and Related Rights Regulations 2003 is up to date with all changes known to be in force on or before 20 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (d) substitute section 296 of the Act so that it applies only to the regime on circumvention of technical devices applied to computer programs required by Council Directive 91/250/EEC; for devices applied to other copyright works currently also covered by section 296 introduce new sections 296ZA (circumvention of technological measures), 296ZD (rights and remedies in respect of devices and services designed to circumvent technological measures) and 296ZE (remedy where effective technological measures prevent permitted acts) to cater for the more comprehensive legal protection for technological protection systems required by Article 6 of the Directive (regulation 24);
- (e) introduce a new section 296ZG of the Act (electronic rights management information) for the protection of electronic rights management information required by Article 7 of the Directive (regulation 25);
- (f) improve existing criminal sanctions and civil remedies so that they are effective, proportionate and dissuasive as required by Article 8 of the Directive by introducing the following:
 - (i) add to the making for sale and dealing offences concerning infringing copies of copyright material so that where a person wilfully infringes copyright by communicating that copyright work to the public on a scale that is prejudicial to the copyright owner or in the course of a business, he will commit an offence under section 107(2A) of the Act (regulation 26),
 - (ii) add to the making for sale and dealing offences concerning illicit recordings of performances so that where a person wilfully infringes a performer's making available right on a scale that is prejudicial to the right holder or in the course of a business, he will commit an offence under section 198(1A) of the Act (regulation 26),
 - (iii) introduce a new offence that where a person manufactures or deals in a device which is capable of circumventing an effective technological measure, he will commit an offence under new section 296ZB of the Act unless he does not have the necessary knowledge that the device facilitates circumvention of the technological measures (regulation 24),
 - (iv) clarifying that an injunction can be sought against an internet service provider where he has actual knowledge of another person using his service to infringe copyright (section 97A of the Act) or a performer's property right (section 191JA of the Act) (regulation 27),
 - (v) enabling a non-exclusive licensee to bring an action for infringement of copyright in certain circumstances (section 101A of the Act) (regulation 28),
 - (vi) extending the right to bring an action against a person who either himself circumvents effective technological measures or who manufactures or deals in devices, or provides services, designed to circumvent those measures to persons issuing copies of, or communicating to the public, works to which those measures have been applied (sections 296ZA and 296ZD of the Act) (regulation 24); and
- (g) adjust provisions dealing with the duration of copyright in sound recordings in section 13A of the Act as required by Article 11(2) of the Directive (regulation 29).

These Regulations come into force on 31st October 2003 and in Part 3—

- (a) subject as expressly provided in the special transitional provisions and savings (regulations 33 to 40), make provision for and apply to: (i) works made, (ii) performances given, (iii) databases in which database right vests which are made, and (iv) works in which publication right vests which are first published, before or after the commencement of these Regulations; acts done before commencement of these Regulations do not infringe any new or extended right arising under these Regulations; except as expressly provided, nothing in these Regulations affects any agreements entered into before 22 December 2002 (the implementation date set out in Article 13 of the Directive), and acts done after commencement in pursuance of an agreement

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made before 22 December 2002 do not infringe any new or extended right arising under these Regulations (regulations 31 and 32);

- (b) ensure the provisions of Chapter 3 of Part 1 of the Act (acts permitted in relation to copyright works) and Schedule 2 to the Act (rights in performances: permitted acts) as they stood before commencement continue apply to anything done after commencement in completion of an act begun before commencement (regulation 33);
- (c) ensure that performers' new making available right replaces that part of the existing remuneration right which might cover this activity and that it is exercisable from commencement, and make provision in circumstances where a performer has died (regulations 34 and 35);
- (d) make provision in relation to any extended copyright in sound recordings arising out of the minor adjustment to copyright term required by Article 11(2) of the Directive and preserve any longer period of copyright in an existing sound recording that continues to subsist until the date it would have expired under Regulation 15 of SI 1995/3297 (regulations 36 to 39);
- (e) make provision in relation to the operation of sanctions and remedies dealing with acts involving devices designed to circumvent copy-protection arising out of the limitation of section 296 to computer programs and the new sections 296ZA and 296AD inserted by these Regulations applying to copy-protection of other works (regulation 40); and
- (f) expressly provide that the new criminal offences apply only to acts committed after commencement (regulation 40).

These Regulations contain three Schedules. Schedule 1 contains consequential amendments of the Act and other enactments, Schedule 2 contains a schedule of repeals, and Schedule 3 contains new Schedule 5A to the Act which relates to regulation 24 which inserts into the Act section 296ZE which makes reference to Schedule 5A.

A regulatory impact assessment and transposition note is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies of the assessment and transposition note are also available from the Intellectual Property and Innovation Directorate, The Patent Office, Harmsworth House, 13-15 Bouverie Street, London EC4Y 8DP.

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Changes and effects yet to be applied to :

- Sch. 1 para. 11(a) revoked by [2006 c. 32 Sch. 12](#)