
STATUTORY INSTRUMENTS

2018 No. 249

**INTELLECTUAL PROPERTY
CONSUMER PROTECTION**

The Portability of Online Content Services Regulations 2018

Made - - - - *26th February 2018*
Laid before Parliament *28th February 2018*
Coming into force - - *1st April 2018*

The Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to intellectual property and measures relating to consumer protection.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation and commencement

1.—(1) These Regulations may be cited as the Portability of Online Content Services Regulations 2018.

(2) These Regulations come into force on 1st April 2018.

Interpretation

2.—(1) In these Regulations—

“provider” means a person who provides an online content service and—

- (a) is required, under Regulation 2017/1128, to ensure that the service is portable; or
- (b) opts, under that Regulation, to provide a service that is portable; and

“Regulation 2017/1128” means 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⁽³⁾.

(1) S.I. 2006/608 and S.I. 1993/2661.

(2) 1972 (c.68), as 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.

(3) OJ No L181, 30.06.2017, p.1.

(2) Other words and expressions in these Regulations are to be construed in accordance with Regulation 2017/1128.

Application

3.—(1) These Regulations apply to online content contracts concluded and online content rights acquired—

- (a) on or after 1st April 2018; or
- (b) before 1st April 2018, where such contracts and rights subsist on or after 1st April 2018.

(2) In paragraph (1), a reference to online content contracts and online content rights is a reference to such contracts and rights which relate to the provision of, the access to, and the use of an online content service under Regulation 2017/1128.

Actionable breach

4.—(1) A breach of an obligation by a provider to comply with Article 3(1) (obligation to provide online content service), Article 3(3) (steps reducing quality of delivery) or Article 9(2) (verification) of Regulation 2017/1128 is a breach of a duty owed by that provider to a subscriber.

(2) Where the subscriber suffers loss or damage due to such a breach by the provider, that loss or damage is actionable by the subscriber against that provider.

Review

5.—(1) The Secretary of State must carry out a review of these Regulations.

(2) In carrying out the review, the Secretary of State must have regard to how, rights and obligations corresponding to rights and obligations in this instrument, operate in other member States.

(3) The Secretary of State must set out the conclusions of the review in a report.

(4) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(5) The Secretary of State must—

- (a) publish the first such report before 1st April 2023; and
- (b) publish subsequent reports at intervals not exceeding five years.

26th February 2018

Sam Gyimah
Minister of State
Department for Business, Energy and Industrial
Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to 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 (“Regulation 2017/1128”)(4). Whilst the terms of that Regulation are directly applicable, the United Kingdom must ensure enforcement of those terms.

Regulation 2017/1128 allows subscribers, temporarily present in a member State other than the member State of their actual and stable residence, to have access to a portable online content service in the same manner as in the member State of residence. A reference in this Note to an Article is to that of Regulation 2017/1128 unless otherwise indicated.

Regulation 1 states that these Regulations come into force on 1st April 2018, which is the same day on which Regulation 2017/1128 becomes directly applicable (Article 11).

Regulation 2 sets out definitions used in these Regulations. Regulation 2017/1128 not only obliges certain online content providers to provide this cross-border service (Article 3), but also offers other providers the possibility of opting-in to the Regulation and being bound by its terms (Article 6). Other words and expressions in these Regulations are to be construed in accordance with Regulation 2017/1128. Regulation 3 provides for these Regulations to apply to contracts and rights connected with online content services relating to Regulation 2017/1128, regardless of when those contracts were entered into or those rights acquired, provided the contracts and rights apply after these Regulations come into force (Article 9.1). In relation to such contracts, any term which disappplies or contravenes Regulation 2017/1128 is unenforceable (Article 7).

Regulation 2017/1128 provides that use of the portable online content service in a member State other than that of the subscriber’s actual and stable residence is deemed to occur according to the laws of the member State of residence (Article 4).

Regulation 4 makes specified Articles actionable where a breach of an obligation owed by a provider to a subscriber causes damage to the latter. This applies to the obligation to provide the portable service and the obligation not to take steps to reduce the quality of the delivery of the service and verification. The obligation to provide the portable service in the ‘same manner’ includes to the same content, on the same range and number of devices, for the same number of users, and with the same range of functionalities. ‘Same manner’ does not extend to requirements relating to the quality of delivery of the service in the other member State unless otherwise agreed between the provider and subscriber but the provider must not take steps to reduce the quality of delivery. The subscribers’ right of access to the service under Regulation 2017/1128 is subject to verification checks by the service provider (which may be waived and that waiver may also be later withdrawn on the giving of reasonable notice).

Regulation 5 requires the Secretary of State to review the operation of these Regulations, and to publish a report on findings. The first report must be published before 1st April 2023. Reports afterwards are to be published at least once in every 5 years. This regulation relates to sections 28 to 31 of the Small Business, Enterprise and Employment Act 2015(5).

These Regulations do not contain every means of enforcement in relation to Regulation 2017/1128, as some enforcement mechanisms are in existing legislation and so are not repeated in this statutory instrument.

(4) OJ No L181, 30.06.2017, p.1.

(5) 2015 c.26.

Status: *This is the original version (as it was originally made).*

An impact assessment has not been published for this instrument as it has minimal impact on the private, public and voluntary sectors.