

## Transposition Table

This transposition table has been prepared by the Intellectual Property Office to accompany the Trade Secrets (Enforcement, etc.) Regulations 2018 which transpose Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their lawful acquisition, use and disclosure (Trade Secrets Directive). Where measures have been transposed, these are intended to address gaps, for example, in statute and court rules. It has been necessary to transpose certain Articles in the regulations in order to provide clarity and cohesion.

Article	Description of Article	Copy out (Yes/No)	If no – Justification
<b>1</b>	This Article defines the subject matter of the Directive and its scope	No	<p><b>Some transposition required.</b></p> <p>Article 1(1) has been transposed in regulation 3. Regulation 3 clarifies that where the measures, procedures and remedies available in an action for breach of confidence offer wider protection to a trade secret holder than that provided by the Regulations, the trade secret holder may apply for and a court may grant them provided they comply with the safeguards set out in Article 1.</p> <p>The principles in Article 1(3) are recognised in case law, e.g. <b>Herbert Morris v Saxelby</b> (HL) [1916] 1 AC 688; <b>Faccenda Chicken</b> (CA) [1987] 1 Ch 117.</p> <p>The principles relating to breach of confidence in common law and equity apply to Scotland, see e.g. <b>Lord Advocate v Scotsman Publications Ltd</b> [1989] SC (HL) 122; and to Northern Ireland, see e.g. <b>AB v Sunday Newspapers T/A the Sunday World</b> [2014] NICA 58.</p>
<b>2</b>	This Article lists definitions of certain terms used in the Directive.	Yes	<p><b>Transposition required.</b></p> <p>Regulation 2 defines the terms ‘infringer’, ‘infringing goods’, ‘trade secret’ and ‘trade secret holder’ in accordance with Article 2. Where the term ‘person’ is used in the definition of ‘infringer’ and ‘trade secret holder’, the term has the same meaning as that provided for by the Interpretation Act 1978.</p>

<p><b>3</b></p>	<p>This sets out the circumstances under which the acquisition of a trade secret is lawful and clarifies that independent discovery or creation and reverse engineering are legitimate means of acquiring information.</p>	<p>N/A</p>	<p><b>Some transposition effected.</b></p> <p>Article 3 is implemented by virtue of regulation 3(1) and the case law on breach of confidence and by statutory instruments.</p> <p>Article 3(1)(a) is implemented in case law, e.g. <b>Saltman v Campbell</b> (CA) [1948] RPC 203; <b>Coco v Clarke</b> (Ch.D) 1969 RPC 41.</p> <p>Article 3(1)(b) has been implemented in case law, e.g. <b>Bristol-Myers Co. v Beecham Group Ltd.</b> (HL) [1974] AC 646; <b>Mars v Teknowledge</b> (Ch.D) [2008] EWHC 226; <b>Volkswagen Aktiengesellschaft v Garcia and others</b> (Ch) [2013] EWHC 1832; <b>Kerry Ingredients (UK) Limited v Bakavor Group Limited</b> (Ch) [2016] EWHC 2448.</p> <p>Article 3(1)(c) concerning the exercise of the right of workers or their representatives to information, has been implemented by, for example, the Information and Consultation of Employees Regulations 2004 (SI 2004/3426) and the Transnational Information and Consultation of Employees Regulations 1999 as amended (SI 1999/3323 as last amended by SI 2010/1988)).</p>
<p><b>4</b></p>	<p>Provides that holders of trade secrets are entitled to apply for the measures, procedures and remedies set out in the Directive to prevent or obtain redress, and sets out the circumstances under which the acquisition, use and disclosure of a trade secret is to be considered unlawful.</p>	<p>N/A</p>	<p><b>Some transposition effected.</b></p> <p>Article 4(1) relates to the measures, procedures and remedies provided for in the Directive and does not require implementation independently of these.</p> <p>Articles 4(2) to (5) are implemented by virtue of regulation 3(1) and case law on breach of confidence e.g. <b>Imerman v Tchenguiz</b> (CA) [2011] 2 WLR 592; <b>ITC Film Distributors Ltd v Video Exchange Ltd</b> (Ch) [1982] 1 Ch 431; <b>JN Dairies v Johal Dairies Limited</b> (Ch) [2009] EWHC 1331; <b>Attorney General v Guardian Newspapers (No.2)</b> (HL) [1989] 1 AC 109; <b>Saltman v Campbell</b> (CA) [1948] RPC 203; <b>Bristol-Myers Co. v Beecham Group Ltd.</b> (HL) [1974] AC 646; <b>EPI Environmental Technologies Inc v Symphony Plastic Technologies plc</b> (Ch) [2005] 1 WLR 3456.</p>

5	Provides exceptions that permit the acquisition, use or disclosure of a trade secret.	N/A	<p><b>Some transposition effected.</b></p> <p>Article 5 is implemented by virtue of regulation 3(1) and breach of confidence and various statutory provisions.</p> <p>Statutory provisions include the Human Rights Act 1988; Trade Union and Labour Relations (Consolidation) Act 1992 (for Northern Ireland, The Trade Union and Labour Relations (Northern Ireland) Order 1995/1980); the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998 (for Northern Ireland, the Public Interest Disclosure (Northern Ireland) Order 1998/1793).</p> <p>A public interest exception exists in case law e.g. <b>Attorney General v Guardian Newspapers (No.2)</b> (HL) 1989 1 AC 109. On freedom of expression see e.g. section 12 of the Human Rights Act 1998 and <b>Campbell v MGN Ltd</b> (HL) [2004] 2 AC 457.</p>
6	Puts a general obligation on Member States to provide measures, procedures and remedies necessary to ensure the availability of civil redress against the unlawful acquisition, use and disclosure of trade secrets, and sets out how measures are to be applied.	N/A	<p><b>No transposition required.</b></p> <p>Implemented through court rules in various jurisdictions in relation to an action for breach of confidence. See e.g. rule 1.1 (overriding objective) of Civil Procedure Rules 1998.</p>
7	Sets out how the measures, procedures and remedies provided for in the Directive are to be applied, and establishes safeguards to avoid litigation being filed in bad faith.	N/A	<p><b>No transposition required.</b></p> <p>Implemented through legislation e.g. Senior Courts Act 1981, Judicature (Northern Ireland) Act 1978, and rules of the courts in the various jurisdictions.</p>
8	Requires Member States to establish rules relating to limitation periods for claims and actions. The Article specifies that the limitation period should not exceed 6 years.	Yes	<p><b>Transposition required</b></p> <p>Regulations 4-9 set out rules concerning time periods for claims and actions as required under Article 8(1). The rules provide for a 6 year limitation period (England, Wales and Northern Ireland) and a 5 year prescriptive period (Scotland). Additional rules specify when the periods will begin to run, how long they will last, and the circumstances under which they may be interrupted or suspended.</p>

9	<p>Requires Member States to ensure trade secrets remain confidential during and after legal proceedings. It sets out the measures that a court may take to preserve the confidentiality of a trade secret or alleged trade secret, specifies how these measures should be applied, and sets out the circumstances under which the obligations no longer apply.</p>	Some	<p><b>Some transposition required</b></p> <p>Many elements of this Article have been copied out, but where appropriate, we have drafted to provide further clarity and have added definitions for certain terms. The Article has been transposed as follows:</p> <p>Article 9(1) to (3) – Regulation 10  Article 9(4) – implemented by the Data Protection Act 1998</p>
10	<p>Requires that Member States ensure that judicial authorities may order certain provisional and precautionary measures against an alleged infringer.</p>	Yes	<p><b>Transposition required.</b></p> <p>Where the Article has been transposed, the regulations ensure consistency across UK legal jurisdictions, compliance with the Directive and aid transparency. This Article has been transposed as follows:</p> <p>Article 10(1) – Regulation 11(1) &amp; (2)  Article 10(2) – Regulation 11(6) &amp; (7)</p>
11	<p>Requires Member States to establish certain conditions of application and safeguards in respect to the provisional and precautionary measures referred to in Article 10, including providing for the measures to be revoked.</p>	Yes	<p><b>Transposition required.</b></p> <p>Where the Article has been transposed, the regulations ensure consistency across UK legal jurisdictions, compliance with the Directive and aid transparency. This Article has been transposed as follows:</p> <p>Article 11(1) – Regulation 12(1)  Article 11(2) – Regulation 12(2)  Article 11(3) – Regulation 11 (3), (4) &amp; (5) &amp; 13(1)(b)  Article 11(4) – Regulation 11(8)  Article 11(5) – Regulation 13(2)</p>
12	<p>Sets out measures that may be ordered where unlawful acquisition, use or disclosure of a trade secret is found.</p>	Yes	<p><b>Transposition required.</b></p> <p>The Article has been transposed to aid transparency and consistency, and ensure compliance with the Directive. This Article has been transposed as follows:</p>

			<p>Article 12(1) – Regulation 14(1)  Article 12(2) – Regulation 14(1)(c)(i) – (iii)  Article 12(3) – Regulation 14(2)  Article 12(4) – Regulation 14(3)</p>
<b>13</b>	Requires Member States to establish conditions and safeguards concerning the injunctions and corrective measures referred to in Article 12, and provides for the measures to be revoked. It also provides for compensation to be paid to the injured party if certain conditions are met.	Yes	<p><b>Transposition required.</b></p> <p>The Article has been transposed to aid transparency and consistency, and ensure compliance with the Directive. This Article has been transposed as follows:</p> <p>Article 13(1) – Regulation 15(1) &amp; (2)  Article 13(2) – Regulation 15(3)  Article 13(3)(a)(b)(c) – Regulation 16(1) &amp; (2)</p> <p><b>Transposition required.</b></p> <p>Where the Article has been transposed, the regulations aid clarity. This Article has been transposed as follows:</p> <p>Article 14(1) – Regulation 17(1)  Article 14(2) – Regulation 17(2), (3) &amp; (4).</p> <p><b>Transposition required.</b></p> <p>The Article has been transposed to provide consistency across UK legal jurisdictions and aid clarity and transparency. This Article has been transposed as follows:</p> <p>Article 15(1) – Regulation 18(1)  Article 15(2) – Regulation 18(2)  Article 15(3) – Regulation 18(3)</p>
<b>14</b>	Provides for judicial authorities to make an award of damages for the prejudice suffered by the trade secret holder as a result of the unlawful acquisition, use or disclosure of his/her trade secret and states that when setting damages, all appropriate factors should be taken into account.	Yes	<p><b>Transposition required.</b></p> <p>Where the Article has been transposed, the regulations aid clarity. This Article has been transposed as follows:</p> <p>Article 14(1) – Regulation 17(1)  Article 14(2) – Regulation 17(2), (3) &amp; (4).</p> <p><b>Transposition required.</b></p> <p>The Article has been transposed to provide consistency across UK legal jurisdictions and aid clarity and transparency. This Article has been transposed as follows:</p> <p>Article 15(1) – Regulation 18(1)  Article 15(2) – Regulation 18(2)  Article 15(3) – Regulation 18(3)</p>
<b>15</b>	Relates to the publication of judicial decisions resulting from proceedings for the unlawful acquisition, use or disclosure of a trade secret. Judicial authorities may order appropriate measures concerning publication of information, including publishing a decision in full or in part, and provided that the trade secret is not disclosed.	Yes	<p><b>Transposition required.</b></p> <p>The Article has been transposed to provide consistency across UK legal jurisdictions and aid clarity and transparency. This Article has been transposed as follows:</p> <p>Article 15(1) – Regulation 18(1)  Article 15(2) – Regulation 18(2)  Article 15(3) – Regulation 18(3)</p>
<b>16</b>	Establishes that judicial authorities may impose sanctions on anyone who fails or refuses to comply with measures set out in the Directive. Sanctions are to be effective, proportionate and dissuasive.	N/A	<p><b>No transposition required.</b></p> <p>The current procedures in respect of contempt of court are considered sufficient for the purposes of the Article, see e.g. the Contempt of Court Act 1981 and Part 81 of the Rules of the Supreme Court.</p>

17	To promote cooperation, this Article requires Member States to designate one or more national correspondents for questions relating to the implementation of the Directive, and specifies that details need to be communicated to other Member States and the EU Commission.	N/A	<p><b>No transposition required.</b></p> <p>The Intellectual Property Office is to be nominated as the contact point for implementation of this Directive.</p>
18	Requires the European Union Intellectual Property Office to produce an initial report on litigation trends by 9 June 2021, and the Commission to produce an intermediate report on the application of the Directive by 9 June 2022. The Commission also needs to carry out an evaluation of the impact of the Directive by 9 June 2026 and submit its report to the European Parliament and the Council.	N/A	<p><b>No transposition required.</b></p> <p>Only applicable to European Union Intellectual Property Office and the European Commission.</p>
19	Requires that Member States must implement the Directive by 9 June 2018 and inform the Commission of the main provisions adopted in national law.	N/A	<p><b>No transposition required.</b></p>
20	States that the Directive enters into force on the twentieth day following that of its publication in the Official Journal of the European Union	N/A	<p><b>No transposition required.</b></p>
21	States that the Directive is addressed to Member States	N/A	<p><b>No transposition required.</b></p>