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STATUTORY INSTRUMENTS

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**2018 No. 995**

**The Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018**

**PART 2**

**Amendments to the 1988 Act**

**Amendments to the 1988 Act**

2. The 1988 Act is amended in accordance with this Part.

**Infringement by issue of copies to the public**

- 3.—(1) Section 18 (infringement by issue of copies to the public)(1) is amended as follows.

- (2) For subsection (2), substitute—

“(2) References in this Part to the issue to the public of copies of a work are to the act of putting into circulation in the United Kingdom copies not previously put into circulation in the EEA by or with the consent of the copyright owner.”

- (3) In subsection (3)—

- (a) in paragraph (a) omit “, or”;
- (b) omit paragraph (b);
- (c) omit the words after paragraph (b).

**Disabled persons: copies of works for personal use**

- 4.—(1) Section 31A (disabled persons: copies of works for personal use)(2) is amended as follows.

- (2) In subsection (1)—

- (a) in paragraph (a), for “possession or lawful use of” substitute “access to”;
- (b) in paragraph (b), after “enjoying the work to” insert “substantially”.

- (3) In subsection (2)—

- (a) in paragraph (a), after “person,” insert “and”;
- (b) in paragraph (b) omit “, and”;
- (c) omit paragraph (c).

- (4) Omit subsection (3).

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(1) Section 18(2) was amended by [S.I. 1992/3233](#), regulation 4(1) and [S.I. 1996/2967](#), regulation 9(2).

(2) Section 31A was inserted by [S.I. 2014/1384](#), regulation 2(3).

**Making and supply of accessible copies by authorised bodies**

5.—(1) Section 31B (making and supply of accessible copies by authorised bodies)(3) is amended as follows.

(2) In the section heading, for “and supply” substitute “, communicating, making available, distributing or lending”.

(3) For subsection (1) substitute—

“(1) If—

- (a) an authorised body has lawful access to the whole or part of a work which has been published or otherwise made available, and
- (b) the body complies with subsection (1A),

the body may, without infringing copyright, make, communicate, make available, distribute or lend accessible copies of the work on a non-profit basis for the personal use of disabled persons in the United Kingdom or another member State of the European Union.

(1A) An authorised body complies with this subsection if it—

- (a) distributes, communicates, makes available or lends accessible copies only to disabled persons or other authorised bodies,
- (b) takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available to the public of accessible copies,
- (c) demonstrates due care in, and maintains records of, its handling of works and accessible copies, and
- (d) publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations in paragraphs (a), (b) and (c).”

(4) Omit subsections (2) to (4).

(5) In subsection (5)—

- (a) for “subsections (1) and (3)” substitute “subsection (1)”;
- (b) for “supply” substitute “to communicate, make available, distribute or lend”;
- (c) for “includes supply” substitute “includes to communicate, make available, distribute or lend”.

(6) Omit subsections (6) to (8).

(7) In subsection (9)—

- (a) for “supply” substitute “communicate, make available, distribute or lend”;
- (b) after “another authorised body” insert “established in the United Kingdom or another member State of the European Union”.

(8) Omit subsection (10).

**Making and supply of intermediate copies by authorised bodies**

6.—(1) Section 31BA (making and supply of intermediate copies by authorised bodies)(4) is amended as follows.

(3) Section 31B was inserted by [S.I. 2014/1384](#), regulation 2(4).

(4) Section 31BA was inserted by [S.I. 2014/1384](#), regulation 2(4).

(2) In the section heading, for “and supply” substitute “, communicating, making available, distributing or lending”.

(3) In subsection (2), for “supply it” substitute “communicate, make available, distribute or lend it on a non-profit basis”.

(4) Omit subsection (4).

### **Accessible and intermediate copies: records and notification**

7. In section 31BB (accessible and intermediate copies: records and notification)(5) for subsections (1) to (3), substitute—

“(1) A person listed in subsection (3) may request an authorised body—

(a) making accessible copies under section 31B, or

(b) making intermediate copies under section 31BA,

to provide the person with the information in subsection (4).

(2) On receipt of a request under subsection (1), an authorised body must provide the information to the person in an accessible way within a reasonable time.

(3) The persons who may make a request under subsection (1) are—

(a) disabled person;

(b) another authorised body;

(c) rightholders.

(4) The information that must be provided by the authorised body is—

(a) the list of works for which it has accessible copies and the available formats, and

(b) the name and contact details of any authorised body established in another member State of the European Union from which, or to which, it has imported, exported or accessed an accessible copy.”

### **Sections 31A to 31BB: interpretation and general**

8.—(1) Section 31F (sections 31A to 31BB: interpretation and general)(6) is amended as follows.

(2) In subsection (2), after “copyright work to” insert “substantially”.

(3) In subsection (3), after “can be improved,” insert “for example”.

(4) In subsection (4), for “the fuller enjoyment of the work by disabled persons” substitute “disabled persons to access the work, including accessing it as feasibly and comfortably as a person who is not a disabled person”.

(5) Omit subsection (7).

(6) In subsection (8), after “by virtue of section”, insert “27,”.

### **Infringing copies may be treated as prohibited goods**

9. In section 111(3B) (infringing copies may be treated as prohibited goods)(7) for the words from “Article 5(1)” to the end, substitute “Article 3 of Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights”.

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(5) Section 31BB was inserted by [S.I. 2014/1384](#), regulation 2(4).

(6) Section 31F was inserted by [S.I. 2014/1384](#), regulation 2(5).

(7) Section 111(3B) was inserted by [S.I. 1995/1445](#), regulation 2(2) and amended by [S.I. 2004/1473](#), regulation 12.

**Remedy where effective technological measures prevent permitted acts**

**10.**—(1) Section 296ZE (remedy where effective technological measure prevent permitted acts)(**8**) is amended as follows.

(2) In subsection (1), at the appropriate places insert—

““Marrakesh beneficiary” means a person who—

- (a) is blind,
- (b) has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment,
- (c) has a perceptual or reading disability and is, as a result, unable to read printed works to substantially the same degree as a person without such disability, or
- (d) is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would normally be acceptable for reading;”;

““Marrakesh work” means a work in the form of a book, journal, newspaper, magazine or other kind of writing, notation, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks and in digital format, which is protected by copyright, related rights or database rights and which is published or otherwise lawfully made publicly available;”.

(3) In subsection (9) before “This section does not apply” insert “Subject to subsection (9A).”.

(4) After subsection (9) insert—

“(9A) But this section does apply where the application of any effective technological measure to a Marrakesh work prevents the making of an accessible copy of that work under sections 31A, 31B or 31BA, or paragraphs 3A, 3B or 3C of Schedule 2, for the benefit of a Marrakesh beneficiary.”

**Amendments to Schedule 2 – Rights in Performances: Permitted Acts**

**11.** Schedule 2 (rights in performances: permitted acts) is amended in accordance with regulations 12 to 16.

**Disabled persons: copies of recordings for personal use**

**12.**—(1) Paragraph 3A (disabled persons: copies of recordings for personal use)(**9**) is amended as follows.

(2) In sub-paragraph (1)—

- (a) in paragraph (a), for “possession or lawful use of” substitute “access to”;
- (b) in paragraph (b), after “enjoying the recording to” insert “substantially”.

(3) In sub-paragraph (2)—

- (a) in paragraph (a), after “person,” insert “and”;
- (b) in paragraph (b) omit “and”;
- (c) omit paragraph (c).

(4) Omit sub-paragraph (3).

(**8**) Section 296ZE was inserted by [S.I. 2003/2498](#), regulations 3 and 24(1).

(**9**) Schedule 2, paragraph 3A was inserted by [S.I. 2014/1384](#), regulation 3.

### **Making and supply of accessible copies by authorised bodies**

13.—(1) Paragraph 3B (making and supply of accessible copies by authorised bodies)(10) is amended as follows.

(2) In the paragraph heading for “and supply” substitute “communicating, making available, distributing or lending”.

(3) For sub-paragraph (1) substitute—

“(1) If—

- (a) an authorised body has lawful access to the whole or part of a work which has been published or otherwise made available, and
- (b) the body complies with sub-paragraph (1A),

the body may, without infringing the rights conferred by this Chapter, make, communicate, make available, distribute or lend accessible copies of the work on a non-profit basis for the personal use of disabled persons in the United Kingdom or another member State of the European Union.

(1A) An authorised body complies with this sub-paragraph if it—

- (a) distributes, communicates, makes available or lends accessible copies only to disabled persons or other authorised bodies,
- (b) takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available to the public of accessible copies,
- (c) demonstrates due care in, and maintains records of, its handling of works and accessible copies, and
- (d) publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations in paragraphs (a), (b) and (c).”

(4) Omit sub-paragraphs (2) and (3).

(5) In sub-paragraph (4)—

- (a) for “sub-paragraphs (1) and (2)” substitute “sub-paragraph (1)”;
- (b) for “supply” substitute “communicate, make available, distribute or lend”;
- (c) for “includes supply” substitute “includes to communicate, make available, distribute or lend”.

(6) Omit sub-paragraphs (5) to (7).

(7) In sub-paragraph (8)—

- (a) for “supply” substitute “communicate, make available, distribute or lend”;
- (b) after “another authorised body” insert “established in the United Kingdom or in another member State of the European Union”.

(8) Omit sub-paragraph (9).

(9) After sub-paragraph (10), insert—

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

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(10) Schedule 2, paragraph 3B was inserted by [S.I. 2014/1384](#), regulation 3.

**Making and supply of intermediate copies by authorised bodies**

14.—(1) Paragraph 3C (making an supply of intermediate copies by authorised bodies)(11) is amended as follows.

(2) In the section heading for “and supply” substitute “communicating, making available, distributing or lending”.

(3) In sub-paragraph (2), for “supply” substitute “communicate, make available, distribute or lend it on a non-profit basis”.

(4) Omit sub-paragraph (4).

**Accessible and intermediate copies: records**

15. In paragraph 3D (accessible and intermediate copies: records)(12) for sub-paragraphs (1) and (2), substitute—

“(1) A person listed in sub-paragraph (2) may request an authorised body—

- (a) making accessible copies under paragraph 3B, or
- (b) making intermediate copies under paragraph 3C,

to provide the person with the information in sub-paragraph (4).

(2) On receipt of a request under sub-paragraph (1), an authorised body must provide the information to the person in an accessible way within in a reasonable time.

(3) The persons who may make a request under sub-paragraph (1) are—

- (a) disabled person;
- (b) another authorised body;
- (c) rightholders.

(4) The information that must be provided by the authorised body is—

- (a) the list of works for which it has accessible copies and the available formats, and
- (b) the name and contact details of any authorised body established in another member State of the European Union from which, or to which, it has imported, exported or accessed an accessible copy.”

**Paragraphs 3A to 3D: interpretation and general**

16.—(1) Paragraph 3E (paragraphs 3A to 3D: interpretation and general)(13) is amended as follows.

(2) In sub-paragraph (2), after “a performance to” insert “substantially”.

(3) In sub-paragraph (3), after “can be improved,” insert “for example”.

(4) In sub-paragraph (4), for “the fuller enjoyment of the recording by disabled persons” substitute “disabled persons to access that version, including accessing it as feasibly and comfortably as a person who is not a disabled person”.

(5) In sub-paragraph (7), for “and “supply” have” substitute “has”.

(11) Schedule 2, paragraph 3C was inserted by [S.I. 2014/1384](#), regulation 3.

(12) Schedule 2, paragraph 3D was inserted by [S.I. 2014/1384](#), regulation 3.

(13) Schedule 2, paragraph 3E was inserted by [S.I. 2014/1384](#), regulation 3.