
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the implementation of Member State options in relation to exceptions relating to copyright and performers' rights which are permitted by [Directive 2001/29/EC\(1\)](#) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. The provisions of the Directive relied on are Article 5(2)(c) in relation to publicly accessible libraries, educational establishments, museums and archives, Article 5(3)(a) in relation to illustration for teaching and scientific research and Article 5(3)(n) in relation to research and private study through dedicated terminals on the premises of educational and other establishments.

The Regulations make amendments to Chapter 3 of Part 1 of, and Schedule 2 to, the Copyright, Designs and Patents Act 1988 ("the 1988 Act"). These provisions relate to exceptions relating to copyright and rights in performances. The provision made by these Regulations relate to research and private study (including text and data analysis for non-commercial research), education, libraries and archives, recordings of folksongs and recording of broadcasts for archival purposes.

Regulation 3 extends the provisions of section 29 (which currently allows some types of copyright works to be copied for research and private study) to cover all types of copyright work and introduces a new section 29A (which makes provision for the copying of material in order to carry out a computational analysis of all the materials contained therein, for the purposes of non-commercial research). Corresponding amendments are made to Schedule 2 by the introduction of paragraphs 1C and 1D which introduce corresponding exceptions to rights in performances.

Regulation 4 substitutes new sections 32, 35 and 36 relating to education. New section 32 permits fair dealing with a copyright work for the sole purpose of illustration for instruction (which includes acts done in relation to the setting and answering of examination questions). The dealing must be for a non-commercial purpose and be by a person giving or receiving the instruction. New section 35 permits educational establishments to make copies of recordings of broadcasts which have been made for the non-commercial educational purposes of the establishment and communicate them to staff and pupils, provided that where the communication may be received off the premises it must be made by means of a secure electronic network which is accessible only to staff or pupils. The exception to copyright does not apply if or to the extent that licences are available authorising the acts in question and the educational establishment knew or ought to have been aware of the fact. The existing requirement that the licensing scheme must be certified by the Secretary of State has been removed. New section 36 permits educational establishments to copy up to 5% of a work (other than a broadcast, or an artistic work which is not included in another work) in any 12 month period, provided that the copy is made for the purposes of instruction for a non-commercial purpose and is accompanied by a sufficient acknowledgement. It also permits such copies to be communicated to staff and pupils (for example by means of an interactive white board), provided that where the communication may be received off the premises it must be made by means of a secure electronic network which is accessible only to staff or pupils. The exception to copyright does not apply if or to the extent that licences are available authorising the acts in question and the educational establishment knew or ought to have been aware of the fact. Any term of a licence which purports to restrict the proportion of any work which may be copied to less than 5% is of no effect. Corresponding amendments are made to Schedule 2 by the substitution of new paragraphs 4 and 6

(1) OJ No L167, 22.6.2001, p 10.

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and the insertion of new paragraph 6ZA which introduce similar exceptions to performers' rights in relation to fair dealing with their performances and the copying of recordings of performances.

Regulations 5 and 6 make a number of amendments to the provisions which relate to exceptions to copyright regarding libraries and archives. The effect of these amendments is to expand the scope of the existing exceptions to cover more types of copyright works. A new section 40B is introduced into the 1988 Act which allows libraries, archives, museums and educational establishments to make material available by means of dedicated terminals on their premises. New section 41 is introduced which allows librarians to supply copies of copyright works to other libraries provided certain conditions are met. New section 42 allows the making of replacement copies of works for other libraries. New section 42A makes provision for the supply by librarians of single copies of published works to persons requesting them providing that certain conditions are met. New section 43 makes provision for the provision of single copies of unpublished works provided that certain conditions are met. New section 43A contains definitions. Corresponding amendments are made to Schedule 2 by the introduction of paragraphs 6C to 6H which introduce similar exceptions to rights in performances in relation to the copying of recordings of performances.

Regulation 7 makes amendments to section 61 and paragraph 14 of Schedule 2, the main effect of which is to remove the requirements for an archive for folksongs to be designated by order.

Regulation 8 substitutes a new section 75 and paragraph 21 of Schedule 2, the main effect of which is to remove the requirement for broadcasting archives to be designated.

The Schedule makes a number of consequential amendments, repeals and revocations.

Full impact assessments of the effect that this instrument will have on the cost of business and the voluntary sector are available from the Intellectual Property Office, Concept House, Cardiff Road, Newport, NP10 8QQ and are annexed to the Explanatory Memorandum (together with a transposition note) which is available alongside the instrument on www.legislation.gov.uk.