

**2018 No. 995**

**COPYRIGHT**

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

<i>Made</i> - - - -	<i>11th September 2018</i>
<i>Laid before Parliament</i>	<i>12th September 2018</i>
<i>Coming into force</i> - -	<i>11th October 2018</i>

The Secretary of State has been designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to intellectual property (including both registered and unregistered rights).

The Secretary of State makes these Regulations in exercise of the powers conferred by that Act.

**PART 1**

**General**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Copyright and Related Rights (Marrakesh Treaty etc.) (Amendment) Regulations 2018.

(2) These Regulations come into force on 11th October 2018.

(3) In these Regulations—

“the 1988 Act” means the Copyright, Designs and Patents Act 1988<sup>(c)</sup>;

“the 1997 Regulations” means the Copyright and Rights in Databases Regulations 1997<sup>(d)</sup>.

**PART 2**

**Amendments to the 1988 Act**

**Amendments to the 1988 Act**

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

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<sup>(a)</sup> S.I. 2006/608.

<sup>(b)</sup> 1972 c. 68; section 2(2) was 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.

<sup>(c)</sup> 1988 c. 48.

<sup>(d)</sup> S.I. 1997/3032.

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

**3.—**(1) Section 18 (infringement by issue of copies to the public)(a) 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)(b) 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).

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

**5.—**(1) Section 31B (making and supply of accessible copies by authorised bodies)(c) 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,

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

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

(c) Section 31B was inserted by S.I. 2014/1384, regulation 2(4).

- (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)(a) is amended as follows.

(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)(b) 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

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

(b) Section 31BB was inserted by S.I. 2014/1384, regulation 2(4).

- (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)(a) 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)(b) 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”.

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

**10.**—(1) Section 296ZE (remedy where effective technological measure prevent permitted acts)(c) 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

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(a) Section 31F was inserted by S.I. 2014/1384, regulation 2(5).

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

(c) Section 296ZE was inserted by S.I. 2003/2498, regulations 3 and 24(1).

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)(a) 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).

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

**13.**—(1) Paragraph 3B (making and supply of accessible copies by authorised bodies)(b) 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).

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(a) Schedule 2, paragraph 3A was inserted by S.I. 2014/1384, regulation 3.

(b) Schedule 2, paragraph 3B was inserted by S.I. 2014/1384, regulation 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.”

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

**14.**—(1) Paragraph 3C (making an supply of intermediate copies by authorised bodies)(a) 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)(b) 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.”

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(a) Schedule 2, paragraph 3C was inserted by S.I. 2014/1384, regulation 3.

(b) Schedule 2, paragraph 3D was inserted by S.I. 2014/1384, regulation 3.

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

**16.**—(1) Paragraph 3E (paragraphs 3A to 3D: interpretation and general)(a) 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”.

## **PART 3**

### **Amendments to the 1997 Regulations**

#### **Amendments to the 1997 Regulations**

**17.** The 1997 Regulations are amended in accordance with this Part.

#### **Interpretation**

**18.** In regulation 12 (interpretation), at the appropriate place insert—

““Marrakesh beneficiary” has the meaning given by section 296ZE(1) of the 1988 Act.”

#### **Exceptions to database right: Marrakesh beneficiaries**

**19.** After regulation 20A(b) insert—

##### **“Exceptions to database right: Marrakesh beneficiaries**

**20B.** Database right in a database is not infringed by the making of an accessible copy of a work under sections 31A, 31B or 31BA of, or paragraphs 3A, 3B or 3C of Schedule 2 to, the 1988 Act for the benefit of a Marrakesh beneficiary.”

## **PART 4**

### **Review**

#### **Review**

**20.**—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations, and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 11th October 2023.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(c) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Directive 2017/1564 of the European Parliament and of the Council of 13 September 2017 to approximate

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(a) Schedule 2, paragraph 3E was inserted by S.I. 2014/1384, regulation 3.

(b) Regulation 20A was inserted by Legal Deposits Libraries Act 2003 (c. 28), section 8(2).

(c) 2015 c. 26. Section 30(3) was amended by the Enterprise Act 2016 (c. 12), section 19.

the laws of Members States relating to copyright and related rights(a) is implemented in other member states.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation 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,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way.

*Sam Gyimah*  
Minister of State

11th September 2018

Department for Business, Energy and Industrial Strategy

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend both the Copyright, Designs and Patents Act 1988 (the “1988 Act”) and the Copyright and Rights in Database Regulations 1997 (the “1997 Regulations”). Article 5(3)(b) of Directive 2001/29/EC (OJ No L167, 22.06.2001, p.10.) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights (the “Infosoc Directive”) permits Member States to provide an exception to the copyright and related rights provided under the Infosoc Directive in the case of uses, for the benefit of disabled persons, which are directly related to their disability and of a non-commercial nature. Directive 2017/1564 (OJ No L242, 20.09.2017, p.6.) of the European Parliament and of the Council of 13 September 2017 to approximate the laws of Members States relating to copyright and related rights (“the Directive”) requires Member States to provide exceptions or limitations to copyright and related rights for the benefit of disabled persons who are blind, visually impaired or otherwise print-disabled.

These Regulations amend how the exception permitted under the Infosoc Directive, and required under the Directive, is implemented in the UK.

Regulation 3 amends section 18 of the 1988 Act relating to the act that constitutes an issue to the public of copies of a work under the 1988 Act. The amendment re-implements Article 9 of obligations now expressed in Directive 2006/115/EC (OJ No L376, 27.12.2006, p.28.) of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

Regulations 4 to 8 amend sections 31A to 31F of the 1988 Act. These sections contain exceptions to the act of infringing copyright under the 1988 Act for the purposes of making and supplying (as relevant) accessible copies (defined in section 31F(5)) for the benefit of disabled persons (defined in section 31F(2)). These Regulations make provision for both the repeal and replacement of certain subsections.

Regulation 4 amends section 31A. Subsection (1) is amended to provide that the section applies if the disabled person has lawful access to a copy of the whole or part of the work and if their disability prevents them enjoying the work to substantially the same degree as a person who does not have that disability. Existing sections 31A(2)(c) and (3) are repealed.

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(a) OJ No L242, 20.09.2017 p.6.



Regulation 5 amends section 31B. Subsection (1) is amended and provides that an authorised body may make, communicate, make available, distribute or lend accessible copies of a work for the personal use of disabled persons. New subsection (1A) establishes principles which an authorised body must comply with when making, communicating, making available, distributing or lending an accessible copy. Subsections (2), (3), (4), (6), (7), (8) and (10) are repealed.

Regulation 6 amends section 31BA. Subsection (2) is amended substituting the permitted act of “supply” of the intermediate copy from one authorised body to another for “communicate, making available, distributing or lending”. The further amendment makes it clear that the intermediate copy may only be made, communicated, made available, distributed or lent on a non-profit basis. Subsection (4) is repealed.

Regulation 7 amends section 31BB. This amendment substitutes existing section 31BB for new subsections (1) to (4).

Regulation 8 amends section 31F which sets out provisions relating to the interpretation of sections 31A to 31BB. The definition of a “Disabled person” in subsection (2) is amended and the amendment to subsection (3) ensures that the use of corrective lenses is provided as only one example of the ways that someone may improve their visual impairment to a level that is normally acceptable for reading without a special level or kind of light. Subsection (7) is repealed.

Regulation 9 updates the legislative reference at section 111(3B) in the 1988 Act from Article 5(1) of Council Regulation (EC) No 1383/2003 (OJ No L 196, 2.8.2003, p.7) concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights to Article 3 of Regulation (EU) No 608/2013 (OJ No L181, 29.06.2013, p.1) of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights.

Regulation 10 amends section 296ZE. Two new definitions for a Marrakesh work and a Marrakesh beneficiary are inserted in subsection (1). New subsection (9A) is inserted. This disapplies subsection (9) where the application of any effective technological protection measure to a Marrakesh work prevents the making of an accessible copy of that work under the disability exceptions in sections 31A, 31B or 31BA and in Schedule 2, paragraphs 3A, 3B or 3C for the benefit of a Marrakesh beneficiary.

Regulations 12 to 16 amend Schedule 2, paragraphs 3A to 3E of the 1988 Act. These provisions contain similar exceptions to sections 31A to 31F relating to rights in performances in relation to recordings of performances in films and sound recordings.

Regulations 18 and 19 amend the 1997 Regulations. Regulation 18 inserts the definition of a Marrakesh beneficiary into the 1997 Regulations by way of a cross-reference to section 296ZE(1) of the 1988 Act. Regulation 19 provides that the database right is not infringed by any act that is for the benefit of a Marrakesh beneficiary if it may be done under sections 31A, 31B or 31BA and in Schedule 2, paragraphs 3A, 3B or 3C of the 1988 Act.

Regulation 20 provides that the Secretary of State must carry out a review of these regulations and publish a report of that review. The first report must be published not later than 12th October 2023. Each subsequent report must be published at intervals not exceeding five years after the first report is published.

A full impact assessment has not been produced for this instrument as no, or no significant impact on the private, voluntary or public sector is foreseen. A copy of this instrument and the Explanatory Memorandum (together with a transposition note) is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport, NP10 8QQ. The Explanatory Memorandum (together with a transposition note) are also available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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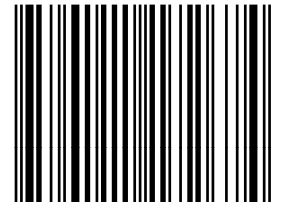


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