Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

COPYRIGHT
RIGHTS IN PERFORMANCES

The Copyright and Rights in Performances (Disability) Regulations 2014

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to matters relating to copyright and rights in performances(**2**).

In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Copyright and Rights in Performances (Disability) Regulations 2014 and come into force at 00.01 on 1st June 2014.

(2) In these Regulations "the 1988 Act" means the Copyright, Designs and Patents Act 1988(**3**).

Amendments to Chapter 3 of Part 1 of the 1988 Act

2.—(1) Chapter 3 of Part 1 of the 1988 Act is amended as follows.

(2) For the cross-heading preceding section 31A(**4**), substitute "Disability".

(3) For section 31A substitute—

(**1**) 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.
(**2**) S.I. 1992/707 and S.I.1993/595.
(**3**) 1988 c.48.
(**4**) Section 31A was inserted into the 1988 Act by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 1 as amended by S.I. 2003/2498, Schedule 1, Part 2 paragraph 27.

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

31A.—(1) This section applies if—

(a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a work, and

(b) the person's disability prevents the person from enjoying the work to the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the work referred to in subsection (1)(a) does not infringe copyright if—

(a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,

(b) the copy is made for the disabled person's personal use, and

(c) the same kind of accessible copies of the work are not commercially available on reasonable terms by or with the authority of the copyright owner.

(3) If a person makes an accessible copy under this section on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.

(4) Copyright is infringed by the transfer of an accessible copy of a work made under this section to any person other than—

(a) a person by or for whom an accessible copy of the work may be made under this section, or

(b) a person who intends to transfer the copy to a person falling within paragraph (a),

except where the transfer is authorised by the copyright owner.

(5) An accessible copy of a work made under this section is to be treated for all purposes as an infringing copy if it is held by a person at a time when the person does not fall within subsection (4)(a) or (b).

(6) If an accessible copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(7) In this section "dealt with" means sold or let for hire or offered or exposed for sale or hire.".

(4) For section 31B(**5**) substitute—

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

31B.—(1) If an authorised body has lawful possession of a copy of the whole or part of a published work, the body may, without infringing copyright, make and supply accessible copies of the work for the personal use of disabled persons.

(2) But subsection (1) does not apply if the same kind of accessible copies of the work are commercially available on reasonable terms by or with the authority of the copyright owner.

(3) If an authorised body has lawful access to or lawful possession of the whole or part of a broadcast or a copy of a broadcast, the body may, without infringing copyright—

(**5**) Section 31B was inserted into the 1988 Act by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 2 as amended by S.I. 2003/2498, Schedule 1, Part 2, paragraph 22.

(a) in the case of a broadcast, make a recording of the broadcast, and make and supply accessible copies of the recording or of any work included in the broadcast, and

(b) in the case of a copy of a broadcast, make and supply accessible copies of that copy or of any work included in the broadcast,

for the personal use of disabled persons.

(4) But subsection (3) does not apply if the same kind of accessible copies of the broadcast, or of any work included in it, are commercially available on reasonable terms by or with the authority of the copyright owner.

(5) For the purposes of subsections (1) and (3), supply "for the personal use of disabled persons" includes supply to a person acting on behalf of a disabled person.

(6) An authorised body which is an educational establishment conducted for profit must ensure that any accessible copies which it makes under this section are used only for its educational purposes.

(7) An accessible copy made under this section must be accompanied by—

(a) a statement that it is made under this section, and

(b) a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(8) If an accessible copy is made under this section of a work which is in copy-protected electronic form, the accessible copy must, so far as is reasonably practicable, incorporate the same or equally effective copy protection (unless the copyright owner agrees otherwise).

(9) An authorised body which has made an accessible copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under this section for the purposes of enabling that other body to make accessible copies of the work.

(10) If an authorised body supplies an accessible copy it has made under this section to a person or authorised body as permitted by this section and charges the person or body for it, the sum charged must not exceed the cost of making and supplying the copy.

(11) If an accessible copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

(b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(12) In this section "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

31BA.—(1) An authorised body which is entitled to make an accessible copy of a work under section 31B may, without infringing copyright, make a copy of the work ("an intermediate copy") if this is necessary in order to make the accessible copy.

(2) An authorised body which has made an intermediate copy of a work under this section may supply it to another authorised body which is entitled to make accessible copies of the work under section 31B for the purposes of enabling that other body to make accessible copies of the work.

(3) Copyright is infringed by the transfer of an intermediate copy made under this section to a person other than another authorised body as permitted by subsection (2), except where the transfer is authorised by the copyright owner.

(4) If an authorised body supplies an intermediate copy to an authorised body under subsection (2) and charges the body for it, the sum charged must not exceed the cost of making and supplying the copy.

Accessible and intermediate copies: records and notification

31BB.—(1) An authorised body must keep a record of—

(a) accessible copies it makes under section 31B,

(b) intermediate copies it makes under section 31BA, and

(c) the persons to whom such copies are supplied.

(2) An authorised body must allow the copyright owner or a person acting for the copyright owner, on giving reasonable notice, to inspect at any reasonable time—

(a) records kept under subsection (1), and

(b) records of copies made under sections 31B and 31C as those sections were in force before the coming into force of these Regulations.

(3) Within a reasonable time of making an accessible copy under section 31B, an authorised body must—

(a) notify any body which—

(i) represents particular copyright owners or owners of copyright in the type of work concerned, and

(ii) has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it, or

(b) if there is no such body, notify the copyright owner (unless it is not reasonably possible to ascertain the name and address of the copyright owner).".

(5) For section 31F(**6**) substitute—

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

31F.—(1) This section supplements sections 31A to 31BB and includes definitions.

(2) "Disabled person" means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to the same degree as a person who does not have that impairment, and "disability" is to be construed accordingly.

(3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.

(4) An "accessible copy" of a copyright work means a version of the work which enables the fuller enjoyment of the work by disabled persons.

(5) An accessible copy—

(a) may include facilities for navigating around the version of the work, but

(b) must not include any changes to the work which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.

(6) "Authorised body" means—

(a) an educational establishment, or

(b) a body that is not conducted for profit.

(**6**) Section 31F was inserted into the 1988 Act by the Copyright (Visually Impaired Persons) Act 2002 (c.33), section 6.

(7) The "supply" of a copy includes making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.

(8) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of section 31A, 31B or 31BA, would not infringe copyright, that term is unenforceable.".

Amendments to Schedule 2 to the 1988 Act

3. After paragraph 3 of Schedule 2 to the 1988 Act, insert—

"Disabled persons: copies of recordings for personal use

3A.—(1) This paragraph applies if—

(a) a disabled person has lawful possession or lawful use of a copy of the whole or part of a recording of a performance, and

(b) the person's disability prevents the person from enjoying the recording to the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the recording referred to in sub-paragraph (1)(a) does not infringe the rights conferred by this Chapter if—

(a) the copy is made by the disabled person or by a person acting on behalf of the disabled person,

(b) the copy is made for the disabled person's personal use, and

(c) the same kind of accessible copies of the recording are not commercially available on reasonable terms by or with the authority of the rights owner.

(3) If a person makes an accessible copy under this paragraph on behalf of a disabled person and charges the disabled person for it, the sum charged must not exceed the cost of making and supplying the copy.

(4) The rights conferred by this Chapter are infringed by the transfer of an accessible copy of a recording made under this paragraph to any person other than—

(a) a person by or for whom an accessible copy of the recording may be made under this paragraph, or

(b) a person who intends to transfer the copy to a person falling within paragraph (a),

except where the transfer is authorised by the rights owner.

(5) An accessible copy of a recording made under this paragraph is to be treated for all purposes as an illicit recording if it is held by a person at a time when the person does not fall within sub-paragraph (4)(a) or (b).

(6) If an accessible copy of a recording made under this paragraph is subsequently dealt with—

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

Making and supply of accessible copies by authorised bodies

3B.—(1) If an authorised body has lawful possession of or lawful access to a copy of the whole or part of a recording of a performance (including a recording of a performance included in a broadcast), the body may, without infringing the rights conferred by this