Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 ISBN 978-0-11-111603-6*

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 (Personal Copies for Private Use) Regulations 2014

Made - - - -	*2014*
Coming into force - -	*1st June 2014*

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 (Personal Copies for Private Use) Regulations 2014 and come into force on 1st June 2014.

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

Amendments to the Act

2. The Act is amended in accordance regulations 3 and 4.

Personal copies for private use

3.—(1) After section 28A(**4**) insert——

(**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 28A was inserted into the Act by S.I. 2003/2498, regulations 3 and 8(1).

"**Personal copies for private use**

28B.—(1) The making of a copy of a work, other than a computer program, by an individual does not infringe copyright in the work provided that the copy—

(a) is a copy of—

(i) the individual's own copy of the work, or

(ii) a personal copy of the work made by the individual,

(b) is made for the individual's private use, and

(c) is made for ends which are neither directly nor indirectly commercial.

(2) In this section "the individual's own copy" is a copy which—

(a) has been lawfully acquired by the individual on a permanent basis,

(b) is not an infringing copy, and

(c) has not been made under any provision of this Chapter which permits the making of a copy without infringing copyright.

(3) In this section a "personal copy" means a copy made under this section.

(4) For the purposes of subsection (2)(a), a copy "lawfully acquired on a permanent basis"—

(a) includes a copy which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)); and

(b) does not include a copy which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the copy.

(5) In subsection (1)(b) "private use" includes private use facilitated by the making of a copy—

(a) as a back up copy,

(b) for the purposes of format-shifting, or

(c) for the purposes of storage, including in an electronic storage area accessed by means of the internet or similar means which is accessible only by the individual (and the person responsible for the storage area).

(6) Copyright in a work is infringed if an individual transfers a personal copy of the work to another person (otherwise than on a private and temporary basis), except where the transfer is authorised by the copyright owner.

(7) If copyright is infringed as set out in subsection (6), a personal copy which has been transferred is for all purposes subsequently treated as an infringing copy.

(8) Copyright in a work is also infringed if an individual, having made a personal copy of the work, transfers the individual's own copy of the work to another person (otherwise than on a private and temporary basis) and, after that transfer and without the licence of the copyright owner, retains any personal copy.

(9) If copyright is infringed as set out in subsection (8), any retained personal copy is for all purposes subsequently treated as an infringing copy.

(10) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable."

(2) After section 296ZE(**5**) insert—

(**5**) Section 296ZE was inserted into the Act by S.I. 2003/2498, regulations 3 and 24(1).

"**Remedy where restrictive measures prevent or restrict personal copying**

296ZEA.—(1) This section applies where an individual is prevented from making a personal copy of a copyright work, or is restricted in the number of personal copies of it which may be made, because of a restrictive measure applied by or on behalf of the copyright owner.

(2) That individual, or a person being a representative of a class of such individuals, may issue a notice of complaint to the Secretary of State.

(3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of—

(a) establishing whether any voluntary measure or agreement relevant to the copyright work subsists, or

(b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant or the class of individuals represented by the complainant the means of benefiting from section 28B to the extent necessary to benefit from that section.

(4) In deciding whether to give such directions, the Secretary of State must consider whether the restrictive measure unreasonably prevents or restricts the making of personal copies, in particular having regard to—

(a) the right of the copyright owner to adopt adequate measures limiting the number of personal copies which may be made, and

(b) whether other copies of the work are commercially available on reasonable terms by or with the authority of the copyright owner in a form which does not prevent or unreasonably restrict the making of personal copies.

(5) The Secretary of State may also give directions—

(a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered,

(b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered, and

(c) generally as to the procedure to be followed in relation to a complaint made under this section,

and shall publish directions given under this subsection in such manner as the Secretary of State thinks will secure adequate publicity for them.

(6) Subsections (5) to (8) of section 296ZE—

(a) apply to directions under subsection (3)(a) or (b) as they apply to directions under section 296ZE(3)(a) or (b), and

(b) apply to directions under subsection (5) as they apply to directions under section 296ZE(4).

(7) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(8) In this section—

"restrictive measure" means any technology, device or component designed, in the normal course of its operation, to protect the rights of copyright owners, which has the effect of preventing a copyright work from being copied (in whole or in part) or restricting the number of copies which may be made;