

EXPLANATORY MEMORANDUM TO
THE INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS)
(AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department for Business, Energy and Industrial Strategy, and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument amends the Copyright, Designs and Patents Act 1988 (CDPA), and associated regulations, to correct deficiencies in, and failures of, retained EU law to operate effectively as a result of the United Kingdom leaving the European Union. It also includes amendments to an Order and necessary revocations.

Explanations

What did any relevant EU law do before exit day?

- 2.2 As set out in Section 6, sub-paragraph 1, a substantial part of the law on copyright in the UK is derived from EU law. There are 11 EU Directives all of which have been implemented by the UK. The purpose of the Directives is to harmonise the copyright frameworks in Member States, by reducing national discrepancies and maintaining a level of protection which encourages creativity and enables consumers from across the EU to access services. In doing this, the Directives create a number of ‘cross-border’ mechanisms and arrangements which have reciprocal effect within the EU. This includes mechanisms and arrangements such that any EU national can receive copyright protection for their works (e.g. databases, broadcasts, computer programmes etc.), in any EU Member State; and a country-of-origin copyright clearance rule for satellite broadcasting (satellite broadcasters need only seek permission to use the copyright in the Member State where the satellite uplink station is situated, rather than in all the states in which the signal is received).
- 2.3 Additionally, there are two EU Regulations of relevance to copyright law in the UK, a Regulation allowing consumers to access their online content services while temporarily present in another Member State, and a Regulation facilitating the cross-border exchange of accessible format (e.g. Braille) copies of works under certain conditions.

Why is it being changed?

- 2.4 Given that EU legislation is in place to harmonise copyright provisions across the EU, when the UK leaves the EU, it leads to the emergence of inappropriate references and the breakdown of several cross-border mechanisms and arrangements which will cease to operate correctly. This instrument ensures that inappropriate references are amended (e.g. by substituting references to “another EEA state” with “an EEA state”). The instrument additionally ensures that cross-border mechanisms and arrangements

which breakdown are resolved on a rational basis (e.g. so that the UK does not give unreciprocated effect to certain mechanisms).

What will it now do?

- 2.5 This instrument will ensure retained EU law contains appropriate references to the “European Union”, “Member State”, etc., which does not presuppose the UK’s membership of the EU. Additionally, the instrument aims to give continued effect to cross-border mechanisms and their underlying policies wherever possible. Where this is not possible (e.g. because the policy concerns a reciprocal obligation operating between EU Member States), the mechanism is given unilateral effect within the United Kingdom. Where it would not be appropriate to give unilateral effect (as it would create adverse consequences for UK businesses if preserved in a one-sided way), the mechanism is brought to an end.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This instrument is being laid in draft for sifting pursuant to the European Union (Withdrawal) Act 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Intellectual Property, Sam Gyimah MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 A substantial part of copyright law in the UK is derived from EU law. The UK has implemented the existing EU copyright Directives via statutory instruments using section 2 of the European Communities Act of 1972 (ECA). There are multiple references to EEA/EU/Member States in both the CDPA and copyright regulations, which presuppose the UK’s membership of these organisations.
6.2 Some of the references to EU/EEA occur in connection to European cross-border copyright mechanisms and arrangements, which have reciprocal effect between EU/EEA Member States.

- 6.3 In addition to this, there are two European regulations on copyright in the UK. These are: Regulation 2017/1128 on cross-border portability of online content services in the internal market; and Regulation 2017/1563 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled.
- 6.4 This instrument rectifies inoperabilities in copyright law in the UK, giving continued effect to cross-border mechanisms and arrangements wherever possible. This will ensure consistency in the UK in relation to the treatment of UK copyright works and EU/EEA copyright works. Where it is not possible to give continued effect to cross-border mechanisms and arrangements (e.g. because the policy concerns a reciprocal obligation operating between EU Member States), such mechanisms and arrangements have been limited to a purely domestic basis. Where limitation to a purely domestic basis would not make sense (e.g. as it would create adverse consequences for UK businesses, if preserved in a one-sided way), the mechanisms and arrangements are brought to an end. This includes the Portability Regulation which will not be preserved.

7. Policy background

What is being done and why?

- 7.1 These regulations ensure deficiencies and inoperabilities in retained EU law (e.g. references to “EU” which presuppose the UK’s membership) are corrected, so as to give correct effect to the underlying policy. Where it is not possible to give continued effect to the underlying policy (e.g. because it is one of the reciprocal obligations between EU Member States), the policy is given unilateral effect; however, where it would not make sense to give unilateral effect, the policy is brought to an end. This will provide stability and certainty in the UK copyright framework as the United Kingdom leaves the European Union. Under this broad rubric, the changes to copyright law in the UK are set out below.
- 7.2 **Sections 6A and 144A of the CDPA** stem in part from the UK’s implementation of the EU Satellite and Cable Directive¹. Section 6A provides for certain safeguards to the country of origin copyright clearance rule² in circumstances where a broadcast is made from outside of the EEA but the commissioning / uplink station is in the EEA. The amendments to **Section 6A** of the CDPA replace references to “EEA State” and “European Economic Area” with “the United Kingdom”. Accordingly, the country of origin principle will remain the same but the change will ensure that the safeguard will apply only where the commissioning / uplink station is in the UK (rather than the EEA).
- 7.3 The Satellite and Cable Directive also sets out rules on cable retransmission. This is implemented in **Section 144A** of the CDPA. The amendment to **Section 144A** omits a reference to “another EEA state” to remove the suggestion that the UK is an EEA state.

¹ Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmissions.

² The country of origin rule allows satellite broadcasters to gain copyright permissions from rightsholders to broadcast only in the country of origin, and not have to worry about gaining such permissions in the country of destination.

- 7.4 **Sections 12, 13A, 13B, 14 and 15A of the CDPA** stem from the UK’s implementation of the EU Term Directive³, and put into effect certain special treatments in respect of copyright duration for copyright works originating from EEA states, when held in contrast to works originating from outside the EEA. When the UK leaves the EU, copyright works originating from the UK will no longer be classed as originating from an EEA state for the purposes of the Term Directive and therefore will no longer qualify for treatment under that Directive, although the UK will be subject to the provisions in the Berne Convention and Rome Convention. Consequently, the amendments to **Sections 12, 13A, 13B, 14, and 15A** of the CDPA replace references to ‘EEA’ with ‘UK’, to ensure that (i) UK right holders will still benefit from certain special treatments in respect of the duration of copyright in their works, and (ii) there is consistency in the treatment of copyright works in the EEA originating from the UK, and copyright works in the UK originating from the EEA.
- 7.5 **Sections 154, 155, and 156 of the CDPA** include references to “EEA” which stem from the Intellectual Property Act 2014 and seek to ensure that the copyright qualification criteria in the UK apply equally to UK and EEA nationals. The amendments to **Sections 154, 155, and 156** delete references to “another EEA state” to (i) remove the suggestion that the UK is an EEA state, and (ii) ensure that there is consistency in the treatment of EEA citizens’ copyrights in the UK and the treatment of UK citizens’ copyrights in the EEA.
- 7.6 **Section 170 of the CDPA** includes a reference to “Directive 2006/116/EC”, which stems from the Enterprise and Regulatory Reform Act 2013, and ensures compliance with the Term Directive⁴. When the UK leaves the EU, there will be no obligation to comply with the terms of the Term Directive. While the Government has no plans to depart from it, there is no good reason to directly refer to third country law in statute and limit the UK unnecessarily. Consequently, the amendments to **Section 170** remove reference to the Term Directive.
- 7.7 **Sections 172A, 178 and 179 of the CDPA** stem in part from The Intellectual Property (Enforcement, etc.) Regulations 2006, which further implement the Enforcement Directive⁵. Changes to **Sections 172A and 179** are consequential to changes made under the rest of Part 1 of the CDPA in relation to references to EEA. The change to **Section 178** is also consequential and ensures there is a definition of a “national of the United Kingdom” in the CDPA.
- 7.8 **Section 191 of the CDPA** contains a reference to “EEA” that stems from the Duration of Copyright and Rights in Performances Regulations 1995, which implements the Term Directive⁶ and certain obligations arising under the EEA Agreement. The amendments replace “EEA” with “UK” to (i) reflect that the UK is no longer a member of the EEA, and (ii) ensure there is consistency in the duration of rights available to UK performers in the EEA, and EEA performers in the UK.
- 7.9 **Section 206 of the CDPA** contains a reference to “EEA” that stems from the Intellectual Property Act 2014 and ensures that “another EEA state” is a qualifying

³ Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights, repealed by Directive 2006/116/EC on the term of protection of copyright and certain related rights.

⁴ Directive 2006/116/EC on the term of protection of copyright and certain related rights.

⁵ Directive 2004/48/EC on the enforcement of intellectual property rights.

⁶ Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights, repealed by Directive 2006/116/EC on the term of protection of copyright and certain related rights.

country for the purposes of that Part of the CDPA. The amendments to Section 206 remove “another EEA state” as a qualifying country.

- 7.10 **Schedule ZA1 of the CDPA** stems from the implementation of the Orphan Works Directive⁷, and was inserted by the Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014. It provides for a copyright exception for cultural heritage institutions to digitise and make available to the public, across the EU, orphan works (copyright works where the right holder is unknown or cannot be found). The exception works by recognising the orphan status of works across the EU, as long as a diligent search has been completed and the details entered onto a database held by the EU Intellectual Property Office (EUIPO). When the UK leaves the EU, this mutual recognition will fall away and the EU will not recognise the orphan status of works that UK libraries, museums, and other cultural heritage institutions place online, and the UK will not have access to the database held by the EUIPO. Consequently, the European orphan works exception will come to an end on exit. UK cultural heritage institutions will no longer be able to make available online across the EU orphan works, under an exception to copyright. However, cultural heritage institutions in the UK will still be able to make use of the UK’s existing domestic Orphan Works Licensing Scheme under the provisions of **Section 116A**, to digitise, and make orphan works available on their websites in the UK. **Sections 44B and 76A** will be omitted in line with **Schedule ZA1**. Amendments will also be made to the **Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014** to remove reference to the EU database.
- 7.11 **Schedule 1 of the CDPA** stems from the implementation of the Term Directive 2006⁸. The Schedule concerns the term of protection of Artistic works, and treats works from other EEA states, in a different way to UK or third country works. The amendments to this section replace the reference to “another EEA state” with “an EEA state”, to reflect that the UK is no longer a member of the EEA.
- 7.12 **Schedule 2 of the CDPA** stems in part from the implementation of the Marrakesh Treaty Directive⁹. **Paragraph 3B** of the Schedule concerns an exception which allows an ‘authorised body’ to make, communicate, make available, distribute or lend accessible format copies of certain types of copyright works, for the benefit of both disabled people “in the United Kingdom or another member State of the European Union” without infringing copyright. To take account of the United Kingdom no longer being a member of the European Union, this exception will be amended so that the exception only applies to accessible copies made for the benefit of disabled persons in the United Kingdom.
- 7.13 **The Duration of Copyright and Rights in Performances Regulations 1995** stem from the implementation of the Term Directive 1993¹⁰. When the UK leaves the EU, it will no longer be part of the EEA. The amendments to the abovementioned regulations, replace references to “another EEA state” with “an EEA state” to reflect the fact that the UK will no longer be part of the EEA. **Regulation 36 (3)** which provides a definition of “another EEA state” will also be removed.

⁷ Directive 2012/28/EU on certain permitted uses of orphan works.

⁸ Directive 2006/116/EC on the term of protection of copyright and certain related rights.

⁹ Directive 2017/1564 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled.

¹⁰ Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights, repealed by Directive 2006/116/EC on the term of protection of copyright and certain related rights.

- 7.14 **The Copyright and Related Rights Regulations 1996** stems in part from the implementation of the Rental and Lending Directive¹¹. The Regulations contain the legal basis of the ‘publication right’. The publication right is limited to works first published “in the European Economic Area”, and to publishers who are nationals “of an EEA State”. The changes make clear that, following Exit, the right will also be available to works first published in the United Kingdom, by publishers who are also nationals of the United Kingdom.
- 7.15 **The Copyright and Rights in Databases Regulations 1997** implement the Database Directive¹², and provide the basis for a “database right” in the UK. In line with the Database Directive, the abovementioned regulations limit the ability to qualify for a database right to, inter alia, those who are nationals of EEA states. When the UK leaves the EU, there will be no obligation for EEA states to recognise UK nationals as eligible to qualify for the database right in the EEA. Consequently, the amendments to the abovementioned regulations replace references to “EEA” with “UK” in order to (i) ensure that UK nationals are still eligible to qualify for the database right in the UK, and (ii) ensure there is consistency in the protection available to EEA nationals in the UK, and UK nationals in the EEA in respect of database rights. Importantly, saving provisions will apply to terms of copyright protection existing prior to Exit day (see below). References to the laws of “an EEA state” are also being replaced.
- 7.16 **The Artist’s Resale Right Regulations 2006** implement the Artist’s Resale Right Directive¹³, and provide the basis for a “resale right” in the UK. Under the Berne Convention for the Protection of Literary and Artistic Works (amended 1979) nationals of contracting parties (to the convention) receive protection only if the legislation in the country to which the author belongs so permits, and to the extent permitted in the country where this protection is claimed. The amendments to the abovementioned regulations replace references to “EEA” with “UK” to reflect the fact that there will no longer be automatic protection for EEA nationals, whilst ensuring that the legislation is still compliant with the Berne Convention.
- 7.17 **The Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014** allows Collective Management Organisations (CMOs) to apply to be authorised to operate extended collective licensing schemes (ECL) in respect of rights for which they are sufficiently representative. Currently, there is no provision in EU law for Member States to provide for the operation of such extended collective licensing schemes. The regulations stipulate that in order to apply for permission to run an ECL scheme, the CMO must have an address for service in the EEA (as opposed to solely the UK). As the UK will be leaving the EU, it will no longer be appropriate to continue to extend the address for service in the EEA and therefore the address for service will be limited to the UK.
- 7.18 **The Collective Management of Copyright (EU Directive) Regulations 2016** implement the Collective Rights Management (CRM) Directive¹⁴. In line with the CRM Directive, the regulations institute the ability for Collective Rights Management Organisations (CMOs) to offer multi-territorial licences in respect of musical works,

¹¹ Directive 92/100/EC on rental and lending right and on certain rights related to copyright in the field of intellectual property.

¹² Directive 96/9/EC on the legal protection of databases.

¹³ Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art.

¹⁴ Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

and stipulate the various governance, technical, and other requirements CMOs must fulfil in offering such licences. UK CMOs that offer multi-territorial licensing of online rights in musical works will continue to be required to represent on request the catalogue of other CMOs (UK or EEA) for multi-territorial licensing purposes, provided one of those territories is the UK. Inappropriate references to Member States and the Treaty on the Functioning of the European Union are being removed. Consequential amendments will also be made to remove the reference to the Directive in **Regulation 51(2)**.

- 7.19 **The Copyright and Performances (Application to Other Countries) Order 2016** clarifies the UK's international obligations with regard to copyright in performances. There is a single reference to "another EEA state" which is corrected to "an EEA state".
- 7.20 **The Portability Regulation¹⁵, and Portability of Online Content Services Regulations 2018¹⁶** enables the temporary portability of online content services across the EU (e.g. allowing consumers to access their online content services on holiday). The Regulation contains a legal fiction which assumes that the rights and permissions of the home territory move with the consumer on a temporary basis, and additional copyright licences are not required. The Portability Regulation, and the 2018 Regulations which relate to enforcement of that Regulation, came into effect in the UK on 1 April 2018. When the UK leaves the EU, it will not be possible for UK online content services to allow UK subscribers to access their services free of charge when temporarily present in EU Member States in accordance with the terms of the Regulation. It would not be appropriate to enable EU online content services to allow EU subscribers to access their services free of charge when temporarily present in the UK, when this freedom is not reciprocated. Consequently, this Instrument revokes both the Portability Regulation (it will not be preserved), and the 2018 Regulations.
- 7.21 **EU Regulation 2017/1563 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled (Marrakesh Treaty)** relates to the EU's membership of the Marrakesh Treaty, which enables certain individuals and organisations in member countries to make copies of literary works in accessible formats (such as Braille, audio, large print) for use by blind, visually impaired and print disabled people, and to exchange such copies between member countries (all of which are parties to the Marrakesh Treaty). A related Directive intended to align EU Member States' laws with the requirements of the Treaty was implemented by the Government by amendment of **Sections 31A-31F** and **Schedule 2, 3A-3E CDDPA**, on 11 October 2018. The Regulation supplements the Directive by providing arrangements for cross-border exchange of accessible format copies between the EU and "third countries" (which describes countries that are not in the EU but are also parties to the Marrakesh Treaty). Following the UK's exit from the EU, the Regulation will be preserved, but minor changes will be made to remove any internal EU cross border arrangements and references to the EU. This is because the UK, post exit day, will not be part of the internal market so the provisions are redundant. EU Member States will then be "third countries" to the UK, and cross-

¹⁵ EU Regulation 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (the EU Portability Regulation).

¹⁶ SI 2018/249

border exchange of copies between the UK and EU Member States will be able to continue under the normal arrangements provided by the Marrakesh Treaty, once the UK has ratified the Treaty.

- 7.22 In addition to the above changes, various transitional provisions and savings are made to ensure that there is no question of any deprivation of sui generis database rights acquired prior to exit day.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 The Intellectual Property Office makes an informal consolidated copy of the CDPA freely available to the public online. Following the entry into force of the Regulations, they will be incorporated into the consolidated copy. Link: <http://www.ipo.gov.uk/cdpa1988-unofficial.pdf>

10. Consultation outcome

- 10.1 This instrument creates necessary changes arising from the UK leaving the European Union. There has not been scope for public consultation on the policy of the instrument; however, the Intellectual Property Office has met with a broad range of affected stakeholders to understand their technical concerns in relation to copyright law in the case of leaving the EU without a deal.

11. Guidance

- 11.1 Guidance on the changes being made by this Instrument and what they mean for copyright law in the UK is planned for publication on Gov.uk, on or before 30 November 2018.

12. Impact

- 12.1 Some changes from the statutory instrument could have an impact on UK businesses, but we expect there to be no significant impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 We have prepared three full Impact Assessments to consider separately the EU Satellite and Cable Directive, the Portability Regulation and sui generis databases rights. These are submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. They show that by making the changes in the statutory instrument UK rights will continue to be protected post-exit and the impact to UK businesses of leaving the EU will be minimised. With regard to the Portability Regulation, reciprocal portability between the UK and EU cannot be fully reproduced on a unilateral basis post-exit and is

therefore brought to an end. We have estimated that the rest of the changes in the statutory instrument will have no significant impact on businesses, falling below the £5 million threshold, and have completed a ‘de minimis’ self-certification form showing this.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The changes in the statutory instrument will not create any disproportionate impact to SMEs and so no specific action is proposed.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Michael Prior at the Intellectual Property Office Telephone: 01633 814431 or email: Michael.Prior@ipo.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nadia Vally, Deputy Director for Copyright and Strategy at the Intellectual Property Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Sam Gyimah MP, Minister of State (Universities and Science) at the Department for Business, Energy and Industrial Strategy (BEIS) can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Minister of State for Universities and Science, Research and Innovation, Sam Gyimah MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: this Instrument is limited to correcting deficiencies and inoperabilities in copyright law in the UK as a result of EU Exit and is intended to give continued effect to the cross-border mechanisms and their underlying policies wherever possible. Where this is not possible (e.g. because the policy concerns a reciprocal obligation operating between EU Member States), the mechanism is given unilateral effect within the United Kingdom. Where it would not be appropriate to give unilateral effect (as it would create adverse consequences for UK businesses if preserved in a one-sided way), the mechanism is brought to an end. The changes made by this Instrument do not make changes to domestic policy going beyond this. Additionally, the SI does not fall into any of the categories listed in Schedule 7 paragraph 1(2) of the European Union (Withdrawal) Act 2018.

2. Appropriateness statement

The Minister of State for Universities and Science, Research and Innovation, Sam Gyimah MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Intellectual Property (Copyright and Related Rights) (EU Exit) (Amendment etc) Regulations 2018 does no more than is appropriate”.

- 2.1 This is the case because of the reasons set out in the sifting statement above.

3. Good reasons

The Minister of State for Universities and Science, Research and Innovation, Sam Gyimah MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.1 These are set out in the sifting statement above.

4. Equalities

- 4.1 The Minister of State for Universities and Science, Research and Innovation, Sam Gyimah MP has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.