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STATUTORY INSTRUMENTS

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**2013 No. 777**

**LIBRARIES**

**The Legal Deposit Libraries (Non-Print Works) Regulations 2013**

*Made - - - - 5th April 2013*

*Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1(4), 2(2), 6(1), 7(3), 10(5) and 11(1) of the Legal Deposit Libraries Act 2003<sup>(1)</sup>.

The Secretary of State has consulted the deposit libraries<sup>(2)</sup> and the publishers appearing to the Secretary of State to be likely to be affected by these Regulations.

The Secretary of State has consulted the Scottish Ministers and the Welsh Ministers<sup>(3)</sup>.

The Secretary of State is satisfied that as regards the restriction by section 7 of the Act (having regard to these Regulations) of activities in relation to relevant material<sup>(4)</sup>, the restriction of those activities under the laws of Ireland is not substantially less.

The Secretary of State is satisfied that as regards the protection under the laws of any part of the United Kingdom of copyright, publication right, database right and patents in relation to relevant material, the protection under the laws of Ireland of corresponding rights is not substantially less.

The Secretary of State is satisfied that as regards the protection from liability under subsections (3) and (4) of section 10 of the Act, the protection under the laws of Ireland in relation to corresponding liability is not substantially less.

The Secretary of State considers that the costs likely to be incurred as a result of these Regulations by persons who publish works to which these Regulations relate are not disproportionate to the benefit to the public arising from the delivery of copies of such works.

The Secretary of State considers that these Regulations do not unreasonably prejudice the interests of persons who publish works to which these Regulations relate.

In accordance with section 11(6) of the Act a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

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(1) 2003 c.28. Section 10(6) of the Act, to which section 10(5) of the Act refers, was amended in relation to England and Wales and Northern Ireland by Part 2 of Schedule 23 to the Coroners and Justice Act 2009 (c.25) and in relation to Scotland by paragraph 72(e) of Schedule 7 to the Criminal Justice and Licensing (Scotland) Act 2010 (2010 asp 13) to reflect changes made to common law libel offences.

(2) “Deposit library” is defined in section 14 of the Act.

(3) The requirement in section 12(5) of the Act to consult the National Assembly for Wales is to be construed as a reference to the Welsh Ministers by virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(4) “Relevant material” is defined in section 7(5)(b) of the Act.

## PART 1

### Introductory

#### Citation and commencement

1.—(1) These Regulations may be cited as the Legal Deposit Libraries (Non-Print Works) Regulations 2013.

(2) They come into force on the day after the day on which they are made.

#### Interpretation

2.—(1) In these Regulations—

“the Act” means the Legal Deposit Libraries Act 2003;

“computer terminal” means a terminal on library premises controlled by the deposit library from which a reader is permitted to view relevant material;

“database right” has the same meaning as in regulation 13 of the Copyright and Rights in Databases Regulations 1997<sup>(5)</sup>;

“IP address” means internet protocol address;

“permanent collection” means the permanent collection held by a deposit library of non-print work delivered or copied under these Regulations;

“personal data” has the same meaning as in section 1 of the Data Protection Act 1998<sup>(6)</sup>;

“publisher” means, in relation to a work to which the Act applies, the person to whom the obligation in section 1(1) of the Act applies in respect of that work;

“web harvester” means a computer program which is used to search the internet in order to request delivery of on line work on behalf of a deposit library;

(2) a reference to “in writing” includes text which is—

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference;

(3) a reference to a deposit library (whether or not to a specific deposit library) includes a person acting on behalf of the deposit library.

3. In regulations 20 and 23 to 31 references to a deposit library include reference to the Faculty of Advocates.

## PART 2

### Exemption for existing micro-businesses and new businesses

#### The exemption

4.—(1) During the exemption period, regulations 13(1)(a), 14(2), 15, 16(3) to 16(7) and 17 do not apply in relation to a work published in a medium other than print where a person publishes the work in the course of a business, if the business is—

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(5) S.I. 1997/3032.

(6) 1998 c.29.

- (a) an existing micro-business, or
  - (b) a new business.
- (2) In relation to a work published off line that is subject to the exemption in paragraph (1)—
- (a) paragraphs (1) and (2) of regulation 15 shall not require delivery of any such work;
  - (b) paragraph (3) of regulation 15 shall have effect as if it provided for the British Library Board (in addition to other deposit libraries) to be entitled to delivery of the work if it requests it, and paragraphs (4) to (10) of that regulation have effect accordingly.

### **Micro-businesses**

5. A micro-business is a business that has fewer than 10 employees (see regulations 9 to 11).

### **Existing micro-businesses**

6. An existing micro-business is a business that was a micro-business immediately before the commencement date.

### **New businesses**

- 7.—(1) A new business is a business which a person, or a number of persons, (“P”) begins to carry on during the period beginning with the commencement date and ending with 31 March 2014.

- (2) But a business is not a new business if—

- (a) P has, at any time during the period of 6 months ending immediately before the date on which P begins to carry on the business, carried on another business consisting of the activities of which the business consists (or most of them), or
- (b) P carries on the business as a result of a transfer (within the meaning of paragraph (4)).

- (3) Paragraph (2)(a) does not apply if the other business referred to in that paragraph was a new business (within the meaning of this regulation).

- (4) P carries on a business as a result of a transfer if P begins to carry on the business on another person ceasing to carry on the activities of which it consists (or most of them) in consequence of arrangements involving P and the other person.

- (5) For this purpose, P is to be taken to begin to carry on a business on another person ceasing to carry on such activities if—

- (a) P begins to carry on the business otherwise than in partnership on such activities ceasing to be carried on by persons in partnership, or
- (b) P is a number of persons in partnership who begin to carry on the business on such activities ceasing to be carried on—
  - (i) by a person, or a number of persons, otherwise than in partnership,
  - (ii) by persons in partnership who do not consist only of all the persons who constitute P, or
  - (iii) partly as mentioned in paragraph (i) and partly as mentioned in paragraph (ii).

- (6) Paragraph (2)(b) does not apply if the activities referred to in paragraph (4) were, when carried on by the person who is not P referred to in that paragraph, activities of a new business (within the meaning of this regulation).

- (7) P is not to be regarded as beginning to carry on a business for the purposes of paragraph (1) if—

- (a) before P begins to carry on the business, P is a party to arrangements under which P may (at any time during the period beginning with the commencement date and ending with 31 March 2014) carry on, as part of the business, activities carried on by any other person, and
  - (b) the business would have been prevented by paragraph (2)(b) from being a new business if—
    - (i) P had begun to carry on the activities when beginning to carry on the business, and
    - (ii) the other person had at that time ceased to carry them on.
- (8) “Arrangements” includes an agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

**The exemption period**

- 8.—(1) The exemption period in relation to an existing micro-business starts with the commencement date and ends with 31 March 2014.
- (2) The exemption period in relation to a new business starts with the date on which P begins to carry on the business and ends with 31 March 2014.

**Number of employees of a business**

9. For the purposes of this Part, the number of employees of a business is calculated as follows—

$$\frac{TH}{37.5}$$

where TH is the total number of hours per week for which all the employees of the business are contracted to work.

**Employees of a business**

10. For the purposes of this Part, the employees of a business are the persons who are employed for the purposes of the business.

**Employees**

- 11.—(1) In this Part, “employee” means an individual who has entered into or works under a contract of employment.
- (2) In paragraph (1) “contract of employment” means a contract of service, whether express or implied, and (if it is express) whether oral or in writing.

**The commencement date**

12. For the purposes of this Part, “the commencement date” means the date on which these Regulations come into force.

## PART 3

### Deposit

#### **Non-print work to which the Act applies**

**13.**—(1) The Act applies to the following descriptions of work published in a medium other than print—

- (a) work that is published off line, and
- (b) work that is published on line.

(2) But, the descriptions of work prescribed in paragraph (1) do not include—

- (a) work consisting only of—
  - (i) a sound recording or film(7) or both, or
  - (ii) such material and other material which is merely incidental to it;
- (b) work which contains personal data and which is only made available to a restricted group of persons; or
- (c) work published before these Regulations were made.

(3) The description of work that is prescribed for the purposes of section 10(5)(a) of the Act is work that is published on the internet and that does not fall within the description given in paragraph (2)(a) or (b).

#### **New and alternative editions**

**14.**—(1) Where substantially the same work is published in the United Kingdom in print and in one or more non-print media, the duty under section 1(1) of the Act applies only in relation to its publication in print unless the publisher and the deposit library agree that instead the duty under section 1(1) of the Act applies in relation to its publication in one of the non-print media in which the work is published.

(2) Where substantially the same work is published in the United Kingdom in two or more non-print media (and is not published in print), the publisher and the deposit library may agree one of those non-print media as the medium in relation to which the duty under section 1(1) of the Act applies and, in the absence of agreement, the publisher may decide the non-print medium (which must be one in which the work is published) in relation to which the duty under section 1(1) of the Act applies.

#### **Entitlement to delivery: off line work**

**15.**—(1) The British Library Board is entitled to delivery under section 1 of the Act of a copy of every work published off line.

(2) A copy must be delivered to the British Library Board within one month beginning with the day of publication.

(3) Each deposit library other than the British Library Board is entitled to delivery under section 1 of the Act of a copy of any work published off line which it requests.

- (4) The following provisions apply to a request made under paragraph (3)—
  - (a) it must be in writing;
  - (b) it must be made—

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(7) “Film” is defined in section 14 of the Act.

- (i) within 12 months beginning with the day of publication, or
- (ii) (in relation to a work published off line that is subject to the exemption in regulation 4) if later, by 30 April 2014;
- (c) it may be made before publication;
- (d) it may relate to all future numbers or parts of an encyclopaedia, newspaper, magazine or other non-print work.
- (5) The copy must be delivered within one month beginning with—
  - (a) the day of publication, or
  - (b) if later, the day on which the request is received.
- (6) The copy delivered pursuant to paragraphs (1) and (3) must be of a quality most suitable for the preservation of the work.
- (7) The quality most suitable for the preservation of the work may be as agreed between the publisher and the deposit library or, in the absence of agreement, a quality which the publisher decides.
- (8) Each deposit library must give a receipt in writing for the copies of work published off line that it receives.

#### **Entitlement to delivery: on line work**

- 16.**—(1) Each deposit library is entitled to delivery under section 1 of the Act of a copy of any work published on line which it requests provided that such a request is made in accordance with paragraph (2) or (3).
- (2) Where there is an agreement between a publisher and a deposit library regarding the method by which a work, or works of a particular description, will be delivered—
  - (a) the request for delivery of the work must be made in writing; and
  - (b) the work must be delivered to the deposit library by the agreed method within one month of the request being made, and must be of a quality which is most suitable for its preservation.
- (3) Where no such agreement is in place, any request for delivery of a work must be made by the deposit library by means of a web harvester from one or more IP addresses dedicated for the purpose of making requests under this paragraph to the IP address from which the work is made available to the public.
- (4) A request by a deposit library under paragraph (3) made in respect of a webpage which contains a login facility will be deemed to be a request for the work or works available behind that login facility provided that the deposit library has given the publisher at least one month's notice in writing before making the request.
- (5) Delivery of a work requested under paragraph (3) must be by electronic means and by automated response to the request made by the web harvester.
- (6) When making a request under paragraph (3) for work or works available behind a login facility, a deposit library must use any relevant login details provided to it by the publisher.
- (7) A deposit library must not use such login details for any purpose except for compliance with these Regulations.
- (8) For the purposes of paragraph (2)(b), the quality most suitable for the preservation of a work shall be such as may be agreed between the publisher and the deposit library or, in the absence of agreement, shall be decided by the publisher.

### **Delivery of additional information**

17. The publisher of a work delivered under regulation 15 or regulation 16(2) must deliver at the same time—

- (a) a copy of any computer program or any other data or information necessary to access the work; and
- (b) a copy of any manual and other material that accompanies the work and is made available to the public.

### **On line work: published in the United Kingdom**

18.—(1) Subject to paragraph (2), a work published on line shall be treated as published in the United Kingdom if—

- (a) it is made available to the public from a website with a domain name which relates to the United Kingdom or to a place within the United Kingdom; or
- (b) it is made available to the public by a person and any of that person's activities relating to the creation or the publication of the work take place within the United Kingdom.

(2) A work published on line shall not be treated as published in the United Kingdom if access to the work is only made available to persons outside the United Kingdom.

(3) Where work is published on the internet and the publication of that work or a person publishing it there is connected with the United Kingdom in the manner prescribed in paragraphs (1) and (2), that manner of connection with the United Kingdom is also prescribed for the purposes of section 10(5) (b) of the Act.

## **PART 4**

### **Permitted activities**

#### **Use etc. of relevant material by deposit libraries**

19. A deposit library may transfer or lend relevant material to any other deposit library.

20. A deposit library may use relevant material for the purposes of—

- (a) reviewing and maintaining the relevant material, and
- (b) the deposit library's own non-commercial research (whether the subject matter of the research is the permanent collection or not).

21. The National Library of Scotland may permanently transfer any relevant material that is an off line legal publication to the Faculty of Advocates.

22. The National Library of Scotland may transfer or lend any relevant material that is an on line legal publication to the Faculty of Advocates.

#### **Reader access to relevant material**

23. A deposit library must ensure that only one computer terminal is available to readers to access the same relevant material at any one time.

24. In the case of relevant material which is work published on line, at least seven days must elapse from the date of delivery of that relevant material to the deposit library before a reader may be permitted to view it.

**25.—**(1) A copyright owner or database right owner in relation to relevant material may make a request in writing to a deposit library to withhold access to that relevant material from readers for a specified period of time.

(2) The deposit library receiving the request must comply with that request if the following conditions are met —

- (a) the period specified in the request does not exceed three years from the date on which the request is made;
- (b) the deposit library is satisfied on reasonable grounds that, for the period specified in the request, viewing of the relevant material by a reader would, or would be likely to, unreasonably prejudice the interests of the person making the request.

(3) The entitlement to make a request under paragraph (1) includes an entitlement to make subsequent requests, and (subject to paragraph (4)) a deposit library must comply with a subsequent request if the conditions in paragraph (2) are met in relation to that request.

(4) If a subsequent request seeks to extend the specified period of time relating to an earlier request made under paragraph (1), that subsequent request must be made at least one month before the specified period expires.

#### **Reader access to relevant material: visually impaired persons**

**26.—**(1) A deposit library may make and supply for use on its premises accessible copies of relevant material for a visually impaired person if copies of the relevant material are not commercially available in a form that is accessible to the visually impaired person.

(2) Paragraph (1) does not apply in relation to relevant material that is a database in which copyright or database right subsists.

(3) A deposit library must ensure that only one reader uses an accessible copy of the same relevant material made under this regulation at any one time.

(4) An accessible copy made under paragraph (1) must be accompanied by—

- (a) a statement that it is made under this regulation; and
- (b) a sufficient acknowledgement.

(5) A deposit library entitled to make accessible copies under paragraph (1) may hold an intermediate copy of the relevant material which is necessarily made during the production of the accessible copies, but only—

- (a) if and so long as the deposit library continues to be entitled to make accessible copies of that relevant material; and
- (b) for the purposes of the production of further accessible copies.

(6) A deposit library may lend or transfer the intermediate copy to another deposit library which is entitled to make accessible copies of the relevant material under paragraph (1) provided that the intermediate copy is used only for the purposes of the production of further accessible copies.

(7) A deposit library must—

- (a) keep records of accessible copies made under this regulation and of the persons to whom they are supplied;
- (b) keep records of any intermediate copy lent or transferred under this regulation and of the deposit libraries to whom it is lent or transferred;
- (c) allow a copyright owner or a person acting for a copyright owner, on giving reasonable notice, to inspect the records at any reasonable time.

(8) Within a reasonable time of making an accessible copy under paragraph (1) or lending or transferring an intermediate copy under paragraph (6), the deposit library must notify—



- (a) each representative body; or
  - (b) if there is no such body, the copyright owner.
- (9) A representative body is a body which—
- (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and
  - (b) has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it.
- (10) The requirement to notify the copyright owner under paragraph (8) does not apply—
- (a) if it is not reasonably possible for the deposit library to ascertain the name and address of the copyright owner; or
  - (b) (where there is more than one copyright owner of the work to which the notification relates) in respect of those persons for whom it is not reasonably possible for the deposit library to ascertain their names and addresses.
- (11) In this regulation—
- (a) “accessible copy” and “visually impaired” have the same meaning as in section 31F of the Copyright, Designs and Patents Act 1988(8) (“the 1988 Act”);
  - (b) “database” has the same meaning as in section 3A of the 1988 Act;
  - (c) “sufficient acknowledgement” has the same meaning as in section 178 of the 1988 Act.

#### **Supplying copies for research etc.**

27.—(1) A deposit library may, if the conditions set out in paragraph (2) are met, produce and supply to a person a copy of relevant material.

- (2) Those conditions are that—
- (a) in relation to relevant material in which database right does not subsist, the deposit library is satisfied that the copy is required by that person for the purposes of non-commercial research or private study, criticism or review or reporting current events, parliamentary or judicial proceedings or a Royal Commission or statutory inquiry and will not be used for any other purpose;
  - (b) in relation to relevant material in which database right subsists, the deposit library is satisfied that the copy is required by that person for the purposes of parliamentary or judicial proceedings or a Royal Commission or statutory inquiry and will not be used for any other purpose;
  - (c) that person has delivered to the deposit library a signed declaration in writing in relation to the relevant material substantially in accordance with the Form in the Schedule to these Regulations;
  - (d) in relation to a copy of relevant material required for the purposes of non-commercial research or private study, the deposit library is satisfied that the requirement of the person requiring the copy is not related and similar to that of another person.
- (3) For the purposes of paragraph (2)(d)—
- (a) requirements shall be regarded as similar if the requirements are for copies of substantially the same relevant material at substantially the same time and for substantially the same purpose; and
  - (b) requirements of persons shall be regarded as related if those persons receive instruction to which the relevant material is relevant at the same time and place.

(4) Unless the deposit library is aware that the signed declaration delivered under paragraph (2) (c) is false in a material particular, the deposit library may rely on it in order to determine whether a copy is required for any of the purposes specified in paragraph (2)(a) or 2(b) and may rely on it in relation to paragraph (2)(d).

**28.—**(1) The supply by a deposit library of a copy of relevant material under regulation 27 is subject to the following provisions of this regulation.

(2) Where the relevant material is capable of being supplied in print, a deposit library must supply a copy of the relevant material in print unless the copyright owner or database right owner (as the case may be) has given permission for a copy to be supplied in a medium other than print in which case it may be supplied in that medium.

(3) Where the relevant material is not capable of being supplied in print, a deposit library may only supply a copy of the relevant material in a medium other than print if the copyright owner or database right owner (as the case may be) has given permission for the deposit library to supply a copy in that medium.

(4) In relation to a copy of relevant material required for the purposes of non-commercial research or private study—

- (a) a deposit library must not supply a person with more than one copy of the same relevant material;
- (b) the copy of the relevant material supplied by a deposit library must not represent more than a reasonable proportion of the relevant material of which the element copied forms a part;
- (c) if the relevant material being copied is an article in a periodical, a deposit library must not supply a person with more than one copy of that article or more than one article contained in the same edition of that periodical.

(5) The person requiring the copy of the relevant material is required to pay for that copy a sum not less than the cost (including a contribution to general expenses) attributable to its production.

#### **Copying relevant material for the purposes of preservation**

**29.—**(1) A deposit library may copy relevant material if the copy is made in any of the circumstances falling within paragraph (2).

(2) The circumstances are that the copy is made (whether from the relevant material itself or from a copy made by the deposit library by virtue of this regulation) in order—

- (a) to preserve or replace the relevant material by placing the copy in the permanent collection in addition to or in place of the relevant material;
- (b) to replace the relevant material in the permanent collection of another deposit library if that relevant material has been lost, destroyed or damaged.

(3) A copy may be made by virtue of this regulation in a different medium or format from the relevant material if the deposit library considers the change is necessary or expedient for the purpose for which the copy is made.

(4) Paragraph (1) does not apply if database right subsists in the relevant material.

#### **Adapting relevant material for the purposes of preservation**

**30.—**(1) A deposit library may adapt relevant material if the adaptation is made in any of the circumstances falling within paragraph (2).

(2) The circumstances are that the adaptation is made (whether from the relevant material itself or from a copy made by the deposit library by virtue of regulation 29) for the following purposes—

- (a) to preserve or replace the relevant material by placing the adaptation in the permanent collection in addition to or in place of the relevant material;
  - (b) to replace the relevant material in the permanent collection of another deposit library if that relevant material has been lost, destroyed or damaged.
- (3) An adaptation may be made by virtue of this regulation in a different medium or format from the relevant material if the deposit library considers the change is necessary or expedient for the purpose for which the adaptation is made.
- (4) Paragraph (1) does not apply if database right subsists in the relevant material.

### **Disposing of relevant material**

**31.**—(1) A deposit library may dispose of relevant material, or copies or adaptations of relevant material, by destroying it but must retain at least one version of any relevant material.

(2) The version or versions retained by a deposit library must be the version or versions which the deposit library considers most suitable for the preservation of the relevant material.

5th April 2013

*Ed Vaizey*  
Parliamentary Under Secretary of State for  
Culture, Media and Sport  
Department for Culture, Media and Sport

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## SCHEDULE

Regulation 27

### Form of declaration: copy of relevant material

1. To.....(Name and address of deposit library)

Please supply me with a copy of the following:

[Description of work]

2. I declare that:

(a) I will not use the copy except for the purposes of [research for a non-commercial purpose] [private study] [criticism or review or reporting current events] [parliamentary or judicial proceedings] [a Royal Commission or statutory inquiry] (delete whichever is inappropriate).

(b) In relation to a copy of relevant material required for the purposes of non-commercial research or private study:

(i) I have not previously been supplied with a copy of the same material by you or by another deposit library; and

(ii) to the best of my knowledge, no person with whom I work or study has made or intends to make, at or about the same time as this request, a request for substantially the same material for substantially the same purpose.

3. I understand that, if the declaration in paragraph 2 is false in a material particular, the copy supplied to me by you will be an infringing copy and that I shall be liable for infringement of copyright in the same way as if I had made the copy myself.

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## EXPLANATORY NOTE

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

These Regulations provide for the Legal Deposit Libraries Act 2003 (“the Act”), under which works published in print in the United Kingdom are delivered to deposit libraries<sup>(9)</sup>, to be extended to work published in a medium other than print, that is, work published on line or off line.

Part 1 of the Regulations deals with introductory matters.

Regulation 1 provides for how these Regulations may be cited and the date on which they come into force.

Regulation 2 contains definitions of expressions used in these Regulations.

Regulation 3 provides that in relation to certain regulations, the expression “deposit library” includes reference to the Faculty of Advocates.

Part 2 of the Regulations sets out an exemption for existing micro-businesses and new businesses.

Regulation 4(1) provides that for a specified period (“the exemption period”) certain regulations do not apply in relation to non-print work where the person who publishes the work does so in the

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<sup>(9)</sup> The deposit libraries under the Act and for the purposes of these Regulations are: The British Library, the National Library of Scotland, the National Library of Wales, the Bodleian Library, Oxford, the University Library, Cambridge, and the Library of Trinity College, Dublin.

course of a business and that business is an existing micro-business or a new business. A charity which trades will fall within the meaning of ‘in the course of a business’ whether or not it is carrying out trading activities with a view to profit.

Regulation 4(2)(a) provides that once the exemption period has ended the automatic entitlement of the British Library Board to delivery of off line work within one month of publication does not apply to any work that was subject to the exemption. Regulation 4(2)(b) provides that once the exemption period has ended, the British Library Board may request delivery, along with the other deposit libraries, of off line work that was subject to the exemption.

Regulation 5 explains what is meant by “micro-business”.

Regulation 6 explains what is meant by “existing micro-business”.

Regulation 7 explains what is meant by “new business”.

Regulation 7(1) provides that P starts a new business when P begins to carry on a business during the period starting on the commencement date and ending on 31 March 2014.

Regulation 7(2) defines when a business is not to be regarded as a “new business”. In the vast majority of cases there will be no question about whether a new business has started as no business will have existed before and so this test will be satisfied. The definition of a new business provides that a business will not be a new business if P has at any time in the six months before the start of the business carried on another business consisting of most of the activities of which the most recent business consists. This is to exclude a business which ceases and then restarts or restructures itself in circumstances where it is not actually a new business. Regulation 7(3) has the effect that a business which does cease and restart will continue to qualify as a new business if the earlier business was a new business.

Regulation 7(2)(b) and (4) provide that a business is not a “new” business if P carries it on as a result of a transfer. That happens when P begins to carry on the business on another person ceasing to carry on the activities of which it consists or mostly consists in consequence of arrangements involving P and the other person. So a business will not count as a new business if:

- a) there is a transfer of activities of an existing business from one person to another,
- b) those activities constitute all or most of the activities of the business to which the transfer is made, and
- c) there is an arrangement for the transfer between the parties.

Regulation 7(5)(a) provides that P is to be taken, for the purposes of regulation 7(4), to begin to carry on a business on another person ceasing to carry on such activities if the business begins to be carried on by P otherwise than in partnership on such activities ceasing to be carried on by persons in partnership.

Regulation 7(5)(b) provides that P is to be taken, for the purposes of regulation 7(4), to begin to carry on a business on another person ceasing to carry on such activities if P is a partnership which begins to carry on the business on such activities ceasing to be carried on –

- (a) by a person or persons otherwise than in partnership,
- (b) by a partnership not consisting only of all the persons constituting P, or
- (c) partly as mentioned in (a) and partly as mentioned in (b).

Regulation 7(6) has the effect that a business will continue to qualify as a new business after a transfer (within the meaning of regulation 7(4)) if the business before it was transferred was also a new business.

Regulation 7(7) provides that P will not be starting a new business if (i) before beginning to carry on a business, P enters into arrangements under which P may at any time during the relevant period carry on, as part of the business, activities carried on by another person, and (ii) the business would have been prevented by regulation 7(2)(b) from being a new business if P had been undertaking the

activities at the time he started his business, and the other person at that time had ceased to carry them on. The intended effect of this provision is that a person will not be carrying on a new business if, before beginning to carry on a business, the person enters into arrangements that mean that at some point after the person's business has started that person may undertake activities carried on by another business and, had the person been undertaking those activities at the time the business was started, that person's business would not have been a new business.

Regulation 8 defines the exemption period in relation to an existing micro-business and a new business.

Regulation 9 explains how the number of employees of a business is calculated.

Regulation 10 explains what is meant by "employees of a business".

Regulation 11 explains what is meant by "employee".

Regulation 12 provides that the expression "commencement date" means the date on which these Regulations come into force.

Part 3 of the Regulations provides for the deposit of non-print work with deposit libraries.

Regulation 13 prescribes a description of non-print work for the purposes of section 1(4) of the Act. The description is based on the manner by which the work is published, specifically, work published on line and work published off line. Regulation 13(2) provides that the prescribed description does not include certain works, namely works consisting only or predominantly of a sound recording or film or both, work which contains personal data and which is only made available to a restricted group of persons, or work which was published before these Regulations were made.

Regulation 13(3) sets out the description of work that is prescribed for the purposes of section 10(5) (a) of the Act. The combined effect of regulation 13(3) and regulation 18(3) (see below) is to permit deposit libraries to *copy* work of the prescribed description from the internet. This is in addition to the ability of deposit libraries to *request* delivery of work published on the internet under regulation 16. The on line work which may be copied by deposit libraries is, with one difference, the same in scope as the on line work which may be requested by deposit libraries – that is, work published on line in the United Kingdom (apart from work which is only or predominantly a sound recording or film, or which contains personal data and is only made available to a restricted group of persons). The difference is that the work which may be copied from the internet may include work published before these Regulations were made.

Regulation 14 makes provision, for the purposes of section 2(2)(b) of the Act, for the medium in which a work should be delivered in circumstances where substantially the same work is published in more than one medium. Regulation 14(1) provides that where substantially the same work is published in print and non-print media, the work should be delivered in print unless the publisher and the deposit library agree that delivery should be in a non-print medium. The non-print medium in which the work is delivered must be one in which the work is published. Regulation 14(2) provides that where substantially the same work is published in more than one non-print medium, the medium of delivery is the medium agreed by the deposit library and the publisher or in the absence of agreement, that decided by the publisher.

Regulation 15 provides for the entitlement of the deposit libraries to a copy of work published off line. Regulation 15(1) and (2) together provide that the British Library Board is automatically entitled to a copy of work published off line within one month of the work being published. Regulation 15(3) provides that the other deposit libraries are entitled on request to delivery of off line work.

Regulation 16 provides for the entitlement of the deposit libraries to a copy of work published on line. Regulation 16(1) provides that each deposit library is entitled to delivery of a copy of the on line work it requests and that any such request must be made in accordance with regulation 16(2) or 16(3).

Regulation 16(2) provides that a request may be made pursuant to an agreement between the publisher and the deposit library as to the method by which work requested under the agreement will be delivered. The method agreed between the publisher and the deposit library regarding the

delivery of on line work may, but need not, include web harvesting. If on line material is delivered pursuant to such an agreement, it must be delivered within one month of the request, and the request must be in writing.

Regulation 16(3) provides that where no agreement of the kind referred to in regulation 16(2) is in place, a request must be made by way of web harvester software sent from an IP address of the deposit library to the IP address hosting the work. Regulation 16(5) provides that the work requested under regulation 16(3) must be delivered by electronic means and by automated response to the request by the web harvester. Overall, the effect is that unless there is in place an agreement of the kind referred to in regulation 16(2), the request and delivery of prescribed on line works is achieved by a deposit library's collecting such work through the use of web harvester software. In relation to works that are not immediately accessible to a web harvester because they are behind a login facility, regulation 16(4) provides that the request by the web harvester will be treated as a request for the works behind the login facility provided that the deposit library has given the publisher at least one month's written notice before making the request. Regulation 16(6) provides that the deposit library must use any login details provided by the publisher in making a request for works behind a login facility.

Regulation 17 provides that in relation to off line work, and on line work delivered pursuant to an agreement under regulation 16(2), the publisher must also deliver to the deposit library a copy of any computer program or other information required to access the work, and a copy of any manual that accompanies the published work.

Regulations 18(1) and (2) define in relation to an on line work what is meant by 'published in the United Kingdom'. Regulation 18(3) provides that this definition is also the prescribed manner in which the publication of a work on the internet, or a person publishing it there, is connected with the United Kingdom for the purposes of section 10(5)(b) of the Act.

Part 4 of the Regulations sets out the activities that deposit libraries (including, in relation to regulations 20 and 23 to 31, the Faculty of Advocates: see regulation 3) and readers may do in relation to relevant material. 'Relevant material' is defined in section 7(5)(b) of the Act.

Regulation 19 provides that a deposit library may transfer or lend relevant material to other deposit libraries.

Regulation 20 provides that a deposit library may use relevant material in order to review or maintain the relevant material, or for the purposes of the deposit library's own non-commercial research.

Regulations 21 and 22 provide that the National Library of Scotland may permanently transfer off line legal publications to the Faculty of Advocates and may transfer or lend on line legal publications to the Faculty of Advocates.

Regulation 23 provides that in each deposit library the same relevant material may only be displayed on one computer terminal at any one time.

Regulation 24 provides that at least seven days must elapse from delivery of on line material to a deposit library before a reader may view it.

Regulation 25 allows a copyright or database right owner in relation to relevant material to request a deposit library to withhold reader access to that material for periods of up to three years provided that the deposit library is satisfied that reader access during this period would, or would be likely to, unreasonably prejudice the interests of the requestor. Subsequent requests may be made in relation to the same relevant material, and a subsequent request may extend an earlier request.

Regulation 26(1) provides for a deposit library to make and supply accessible copies of relevant material for use by visually impaired persons provided that accessible copies are not otherwise commercially available. The terms "accessible copy" and "visually impaired" have the same meanings as in section 31F of the Copyright, Designs and Patents Act 1988. Regulation 26(3) provides that only one reader may use an accessible copy of the same relevant material at the same time. Regulations 26(4) to (9) make provisions in relation to intermediate copies (which are

necessarily made during the production of accessible copies), and impose certain requirements on deposit libraries in connection with making accessible copies.

Regulation 27(1) provides for a deposit library to make and supply a copy of relevant material to a person provided that the conditions in regulation 27(2) are met. Regulation 27(3) provides for what is meant by “similar” and “related” in relation to the requirements of persons requesting copies. Regulation 27(4) provides for the circumstances in which, and the purposes for which, a deposit library may rely on a signed declaration by a person in relation to a request for a copy of relevant material.

Regulation 28 imposes certain requirements on the supply of a copy of relevant material under regulation 27.

Regulations 29 and 30 provide that, in certain circumstances, a deposit library may copy or adapt relevant material for the purposes of preservation.

Regulation 31 provides that a deposit library may destroy relevant material or copies or adaptations of relevant material but must keep at least one copy of the relevant material.

The Schedule contains the form of the declaration to be signed by persons requesting a copy of relevant material under regulation 27.

These Regulations were notified in draft to the European Commission in accordance with Directive [98/34/EC\(10\)](#), as amended by Directive [98/48/EC\(11\)](#).

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available on the DCMS website at <https://www.gov.uk/government/organisations/department-for-culture-media-sport>, and is published with the Explanatory Memorandum alongside the instrument at <http://www.legislation.gov.uk/>.

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(10) OJNo. L 204, 21.7.1998, p.37.

(11) OJ No. L 217, 5.8.1998, p.18.