

DRAFT STATUTORY INSTRUMENTS

2011 No.

LIBRARIES

**The Legal Deposit Libraries (Non-print Publications)
Regulations 2011**

Made - - - - - ***

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(a).

The Secretary of State has consulted the deposit libraries and the publishers appearing to the Secretary of State to be likely to be affected by the Secretary of State's proposals.

The Secretary of State has consulted the Scottish Ministers and the Welsh Ministers(b).

The Secretary of State is satisfied that the restrictions under the laws of Ireland as regards activities in relation to relevant material and the protections from liability in relation to defamation are not substantially less than those prescribed in these Regulations.

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 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 Parliament and approved by resolution of each House.

(a) 2003 c.28. Section 10(8) of that Act was amended by Part 2 of Schedule 23 to the Coroners and Justice Act 2009 (c.25) to reflect changes made to common law libel offences.
(b) The requirement in section 12(5) of the Legal Deposit Libraries Act 2003 (c.28) to consult the National Assembly of 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).

PART 1

Introductory

Citation, commencement and expiration

- 1.—(1) These Regulations may be cited as the Legal Deposit Libraries (Non-print Publications) Regulations 2011.
- (2) They come into force on 6 April 2011.
- (3) They cease to have effect on 5 April 2018.
- (4) [The Secretary of State must conduct a review of the operation and effect of these Regulations and publish the results before 5 April 2017.
- (5) The Secretary of State must take into account the results of the review in deciding—
- (a) whether to allow the Regulations to expire,
 - (b) whether to revoke these Regulations before the expiry date,
 - (c) whether to extend the effect of the Regulations with or without amendment.]

Interpretation

- 2.—(1) In these Regulations—
- (2) “the Act” means the Legal Deposit Libraries Act 2003;
- (3) “display terminal” means a terminal on premises controlled by a deposit library from which a reader(a) may view relevant material(b)
- “non-print work” means —
- (a) an electronic publication(c), for example,—
 - (i) a book;
 - (ii) a sheet of letterpress or music;
 - (iii) a map, plan, chart or table; or
 - (iv) a part of any such work; and
 - (b) which is available free or for a charge; and
 - (c) which does not consist only of —
 - (i) a sound recording or film or both; or
 - (ii) such material and other material which is merely incidental to it; and
 - (d) which is published after the date on which these Regulations are made.
- “off line publication” means a non-print work which is not accessed or delivered by means of the internet and is recorded in a physical form including a CD ROM, DVD or microform;
- “on line publication” means a non-print work which is accessed or delivered by means of the internet (including an electronic publication which comprises material packaged and filtered in response to an enquiry from a user) but not including a private work;
- “permanent collection” means the permanent collection held by a deposit library of non-print works delivered under these Regulations;
- “personal data” has the same meaning as in section 1 of the Data Protection Act 1998(a);

(a) See the definition of “reader” in section 7(5) (a) of the Act. [A “reader means a person who, for the purposes of research or study and with the permission of a deposit library is on library premises controlled by it].

(b) See the definition of “relevant material” in section 7(5) (b) of the Act.

(c) See the definition of “electronic publication” in section 14 of the Act. [An “electronic publication” means an on line or off line publication including any publication in electronic form (within the meaning given by section 178 of the Copyright Designs and Patents Act 1988 (c.48) whereby “electronic” means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, and “in electronic form” means in a form usable only by electronic means)].

- (e) “private work” means an electronic work which—
- (i) is shared by means of the internet using some form of private network, for example, an intranet; or
 - (ii) is a work which contains personal data and whose circulation is restricted to a defined group of persons.

“public access restriction” includes a technical measure which prevents access to a non-print work unless the user or publisher supplies further information including, for example, a password;

“publisher” means the person to whom the obligation in section 1(1) of the Act applies;

“web harvester” means software which is used to search the world wide web and requests delivery of an on line publication on behalf of a deposit library.

3. For the purposes of section 1(4) of the Act a non-print work is a work of a prescribed description.

4. In regulations 23 - 34 references to a deposit library include references to the Faculty of Advocates.

PART 2

Deposit

New and alternative editions

5.—(1) For the purposes of section 2(2)(b) of the Act, the medium of delivery is as follows.

(2) Where substantially the same work is published in both print and non-print the medium of delivery is print unless an alternative medium has been agreed between a publisher and a deposit library in which case the medium of delivery is the agreed medium.

(3) Where substantially the same non-print work is published in more than one medium, the medium of delivery is the medium which has been agreed between the publisher and a deposit library, or, in the absence of agreement, the medium which the publisher chooses.

Delivery of off line publications

6. A copy of every off line publication must be delivered to the British Library Board within one month beginning with the day of publication.

7. Each deposit library other than the British Library Board is entitled to delivery of a copy of any off line publication which it requests.

8. A request under regulation 7 must be in writing (whether sent by electronic or other means).

9. A request for a copy of an off line publication—

- (a) may be made before publication; and
- (b) may relate to all future numbers or parts of an encyclopaedia, or other non-print work.

10. No request may be made after the end of 12 months beginning with the day of publication.

11. 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.

12. The copy delivered pursuant to regulations 6 and 7 must be of the quality most suitable for preservation purposes.

13. The quality most suitable for preservation purposes shall be as agreed between the publisher and a deposit library, or, in the absence of agreement, the quality which the publisher chooses.

Delivery of on line publications

14. A copy of an on line publication which is available free and which is not subject to any public access restrictions must be delivered as soon as reasonably practicable after a request from a deposit library.

15. The obligation in regulation 14 only applies in relation to the first deposit library to make a request.

16. A request under regulation 14 must be in writing (whether sent by a web harvester or other means).

17. A copy of an on line publication for which there is a charge or which is subject to public access restrictions must be delivered—

- (a) within three months of receipt of a request from a deposit library, unless
- (b) the request specifies delivery within a period exceeding three months of receipt of that request in which case delivery must be within the period specified.

18. The obligation in regulation 17 only applies in relation to the first deposit library to make a request.

19. A request under regulation 17 must be in writing (whether sent by web harvester or other means).

20. The copy delivered pursuant to regulations 14 or 17 must be of the quality most suitable for preservation purposes.

21. The quality most suitable for preservation purposes shall be as agreed between the publisher and a deposit library, or, in the absence of agreement, the quality which the publisher chooses.

Delivery of information and material necessary to access the work

22. The publisher of an on line publication for which there is a charge or which is subject to any public access restrictions and which is delivered pursuant to regulations 14 or 17 must deliver at the same time—

- (a) a copy of any computer program and any information (including any tools and data), necessary to access the work including any information required to allow a reader to read the work; and
- (b) a copy of any manual and other material that accompanies the work and is made available to the public.

PART 3

Permitted Activities

Providing access to the relevant material

23. A deposit library must limit the number of readers who may use relevant material at any one time by only allowing the same relevant material to be accessed from one display terminal at any one time.

24. In the case of relevant material comprising an on line publication, a deposit library may not allow a reader to view the relevant material pursuant to regulation 23 until seven days have elapsed since the delivery of that relevant material to the deposit library pursuant to regulations 14 and 17.

25. A deposit library may not within the period specified allow a reader to view the relevant material pursuant to regulation 23 if it has received a written request (whether sent by electronic or other means) from a publisher and the publisher has demonstrated that, on a balance of probabilities, viewing by a reader would—

- (a) conflict with the normal exploitation of the work; and
- (b) unreasonably prejudice the legitimate interests of the publisher.

26. A written request made pursuant to regulation 25 must specify a period not exceeding three years from the date of the deposit of the relevant material during which no deposit library may allow a reader to view the relevant material.

27. The period during which a deposit library may not allow a reader to view specified relevant material pursuant to regulation 25 may be extended if it has received another request in accordance with that regulation.

28. A written request made pursuant to regulation 27 may be made within a period of six months of the date on which a deposit library would otherwise allow a reader to view the specified relevant material pursuant to regulation 23.

Research and private study

29. A deposit library may, if the conditions set out in regulation 30 are complied with, make and supply from a non-print work a copy of part of that work or, in the case of an article in a periodical, the whole of such an article.

30.—(1) The conditions referred to in regulation 29 are that—

- (a) no copy of an article or of any part of a work shall be supplied to the person requiring the same unless—
 - (i) the deposit library is satisfied that the copy is required by that person for the purposes of research for a non-commercial purpose or private study and will not be used for any other purpose; and
 - (ii) that person has delivered to the deposit library a signed declaration in writing in relation to that article or part of a work substantially in accordance with Form A in the Schedule to these Regulations;
- (b) the deposit library is satisfied that the requirement of the person requiring the copy is not related to any similar requirement of another person;
- (c) the person requiring the copy is not supplied—
 - (i) in the case of an article in a periodical, with more than one copy of that article or with a copy of more than one article contained in the same issue of that periodical; or
 - (ii) in the case of a part of a published work, with more than one copy of the same material or with a copy of more than a reasonable proportion of any work;
- (d) the person requiring the copy is required to pay for that copy a sum not less than the cost (including a contribution to general expenses) attributable to its production; and
- (e) the copy is supplied in print unless the publisher has given permission for a deposit library to take the copy in another medium specified by the publisher.

(2) For the purposes of paragraph (1)(b)—

- (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.

(3) Unless the deposit library is aware that the signed declaration delivered under paragraph (1)(a)(ii) 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 paragraphs (1)(a)(i) and (1)(b).

Visual impairment

31.—(1) A deposit library may make 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) A deposit library may allow a visually impaired person access to one accessible copy of the same relevant material on its premises at any one time.

(3) 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 acknowledgment.

(4) A deposit library entitled to make accessible copies under paragraph (1) may hold an intermediate copy of the master copy 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 master copy; and
- (b) for the purposes of the production of further accessible copies.

(5) 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.

(6) 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 section and of the deposit libraries to whom it is lent or transferred;
- (c) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.

(7) Within a reasonable time of making an accessible copy under paragraph (1) or lending or transferring an intermediate copy under paragraph (4), the deposit library must notify—

- (a) each representative body; or
- (b) if there is no such body, the copyright owner.

(8) 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.

(9) The requirement to notify the copyright owner under paragraph (7) does not apply if it is not reasonably possible for the deposit library to ascertain the name and address of the copyright owner.

(10) In this regulation the terms “accessible copy” and “visually impaired” have the same meaning as in sections 31F(3) and (9) of the Copyright, Designs and Patents Act 1988(a) and “sufficient acknowledgement” has the same meaning as in section 178 of that Act.

(a) 1988 c.48.

Copying relevant material for preservation purposes

32.—(1) A deposit library may copy relevant material if the copy is made in 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 enable the relevant material to be preserved or replaced in the future; should it prove necessary to do so, by placing the copy (or a further copy made from it) in the permanent collection in addition to or in place of the relevant material; or
- (c) 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.

Adapting relevant material for preservation purposes

33.—(1) A deposit library may adapt relevant material when this comprises or contains a computer program or database if the adaptation is made in 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 32) in order—

- (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 enable the relevant material to be preserved or replaced in the future; should it prove necessary to do so, by placing the copy (or a further copy made from it) in the permanent collection in addition to or in place of the relevant material; or
- (c) 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 copy is made.

Disposing of relevant material

34.—(1) A deposit library may dispose of duplicate copies by destroying them but may not destroy all copies of any relevant material.

(2) The copy or copies retained by the deposit library must be the copy or copies which the deposit library considers most suitable for preservation purposes.

PART 4

Exemption from Liability

Activities in relation to publications

35. For the purposes of section 10(5)(a) of the Act an on line publication which is connected with the United Kingdom and published by a person connected with the United Kingdom is a work of a prescribed description.

36. For the purposes of Section 10(5)(b) of the Act—

- (a) An on line publication is connected with the United Kingdom if it is published in the United Kingdom;
- (b) A publisher of an on line publication is connected with the United Kingdom if that person publishes for an indefinite period using a fixed establishment in the United Kingdom.

PART 5

General

37. The obligations in regulations 6, 7, 14 and 17 shall not apply to the extent that their fulfilment would—

- (a) impose costs on the publisher which are disproportionate to the benefit to the public arising from the delivery of copies of such works; or
- (b) give rise to any contravention of or failure to comply with the law.

Date

Name
Title
Department

DRAFT

SCHEDULE

Regulation 30

Form A

Declaration: Copy of Article or Part of Published Work

1. To the deposit library of (Address of deposit library)

Please supply me with a copy of the following.

(Delete whichever is inappropriate)

The article in the periodical, the particulars of which are.....

The part of the published work, the particulars of which are.....

2. I declare that—

- (a) I will not use the copy except for [research for a non-commercial purpose] [private study] (delete whichever is inappropriate) and will not supply a copy of it to another person;
- (b) I have not previously been supplied with a copy of the same material by you or by another deposit library; and
- (c) 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.

Signature.....

Date.....

Name.....

Address.....

EXPLANATORY NOTE

(This note is not part of the Order)

Note text

DRAFT