
D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

LIBRARIES

**The Legal Deposit Libraries (Non-print works) Regulations
2013**

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 these Regulations.

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.

(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 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).

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.

PART 1

Introductory

Citation, commencement and expiry

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

(2) They come into force on [date] 2013.

(3) They cease to have effect at the end of the period of seven years beginning with the day on which these Regulations come into force.

Review

2.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives are appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) “Review period” means the period of five years beginning with the day on which these Regulations come into force.

Interpretation

3.—(1) In these Regulations—

- (2) “the Act” means the Legal Deposit Libraries Act 2003;
- (3) “computer terminal” means a terminal on premises controlled by a deposit library from which a reader is permitted to view relevant material;
- (4) “IP address” means internet protocol address;
- (5) “permanent collection” means the permanent collection held by a deposit library of non-print work delivered under these Regulations;
- (6) “personal data” has the same meaning as in section 1 of the Data Protection Act 1998(a);
- (7) “publisher” means the person to whom the obligation in section 1(1) of the Act applies;
- (8) “web harvester” means the software which is used to search the internet in order to request delivery of on line work on behalf of a deposit library.

4. In regulations 25 and 28 to 36 references to a deposit library include reference to the Faculty of Advocates.

(a) 1998 c.29.

PART 2

Exemption for existing micro-businesses and new businesses

The exemption

5. During the exemption period, regulations 18(2), 19, 20 and 22 do not apply in relation to a business if the business is—

- (a) an existing micro-business, or
- (b) a new business.

Micro-businesses

6. A micro-business is a business that has fewer than 10 employees.

Existing micro-businesses

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

New businesses

8.—(1) A new business is a business which a person, or a number of persons, (“P”) begins to carry on on or after the commencement date.

(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 (3)).

(3) 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.

(4) 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) 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, 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 sub-paragraph (i) and partly as mentioned in sub-paragraph (ii).

(5) 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 on or after the commencement date) 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.

(6) “Arrangements” includes an agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

The exemption period: existing micro-businesses

9.—(1) The exemption period, in relation to an existing micro-business, is the period beginning on the commencement date and ending when the business is treated as ceasing to be a micro-business for the purpose of this regulation.

(2) A business is treated as ceasing to be a micro-business for the purpose of this regulation if, during an assessment period, the number of days when the business is not a micro-business is greater than the number of days when the business is a micro-business.

(3) In a case within paragraph (2), the business is treated as ceasing to be a micro-business for the purpose of this regulation on the day after the end of the assessment period.

(4) An “assessment period”, in relation to an existing micro-business, is a period of 6 months beginning with—

- (a) the first day after the commencement date on which the business ceases to be a micro-business, or
- (b) where, during an earlier assessment period, the number of days when the business is not a micro-business is less than or equal to the number of days when the business is a micro-business—
 - (i) the day after the end of the earlier assessment period, if on that day the business is not a micro-business, or
 - (ii) the first day after the end of the earlier assessment period on which the business ceases to be a micro-business, in any other case.

The exemption period: new businesses

10.—(1) The exemption period, in relation to a new business, is the period beginning on the date on which P begins to carry on the business and ending on the date on which P ceases to carry on the business.

(2) If P is a number of persons in partnership, P is not to be taken for this purpose to cease to carry on the business if—

- (a) the members of the partnership change, or the partnership is dissolved, and
- (b) after the change or dissolution, the business is carried on by at least one of the persons who constituted P.

Number of employees of a business

11.—(1) For the purposes of this Part, the number of employees of a business is taken to be the number of its full-time equivalent employees.

(2) The number of full-time equivalent employees of a business is calculated as follows—

$$\text{TH}/37.5$$

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

12. For the purposes of this Part, the employees of a business are all persons who are employed for the purposes of the business, in connection with any of the activities of which the business consists.

Employees

13.—(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.

Businesses

14. In this Part, “business” means something which is—

- (a) a trade, profession or vocation for the purposes of the Income Tax Acts or the Corporation Tax Acts,
- (b) a property business (within the meaning of section 263(6) of the Income Tax (Trading and Other Income) Act 2005), or
- (c) an investment business (that is, a business consisting wholly or partly of making investments).

Franchises

15. For the purposes of this Part, a business that is carried on pursuant to a franchise agreement is treated as part of the business of the franchisor (and not as a separate business carried on by the franchisee).

The commencement date

16. 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

17.—(1) The following descriptions of work are prescribed for work published in a medium other than print—

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

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

- (a) work shared by means of a private network, for example, an intranet; or
- (b) work which contains personal data and which is only made available to a restricted group of persons.

(3) The descriptions of work prescribed in paragraphs (1) and (2) are also prescribed for the purposes of section 10(5)(a) of the 2003 Act.

New and alternative editions

18.—(1) Where substantially the same work is published in both print and non-print media, the medium of delivery is print unless the publisher and the deposit library agree that the medium of delivery is a non-print medium in which the work is published.

(2) Where substantially the same work is published in more than one non-print medium, the publisher and the deposit library may agree one such non-print media as the medium of delivery and, in the absence of agreement, the publisher may decide the medium of delivery.

Entitlement to delivery: off line work

19.—(1) The British Library Board is entitled to delivery 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 of a copy of any work published off line which it requests.

(4) A request under regulation 19(3) must be in writing (whether sent by electronic or other means).

(5) A request—

(a) may be made before publication; and

(b) may relate to all future numbers or parts of an encyclopaedia, newspaper, magazine or other non-print work.

(6) No request may be made after the end of 12 calendar months beginning with the day of publication.

(7) The copy must be delivered within one calendar month beginning with—

(a) the day of publication, or

(b) if later, the day on which the request is received.

(8) The copy delivered pursuant to regulations 19(1) and 19(3) must be of a quality most suitable for preservation purposes.

(9) The quality most suitable for preservation purposes may be as agreed between the publisher and the deposit library or, in the absence of any agreement, a quality which the publisher decides.

(10) Each deposit library must give a receipt in writing (whether sent by electronic or other means) for the copies of work published off line that it receives.

Entitlement to delivery: on line work delivered by web harvester

20.—(1) Subject to regulation 21, each deposit library is entitled to delivery of a copy of any work published on line which it requests.

(2) A request must be made by the deposit library by means of a web harvester from one or more dedicated IP addresses to the IP address from which the work is made available to the public.

(3) A request by a deposit library under regulation 20(2) made in respect of a webpage which contains a login facility will be taken to be a request for the work or works available behind that login facility for the purposes of these regulations.

(4) Delivery of a work requested under regulation 20(2) must be by electronic means and by automated response to the request made by the web harvester.

(5) Before a deposit library makes its first request in respect of work available behind a login facility, the deposit library must give the publisher not less than 14 days' written notice of the request being made.

(6) A deposit library must use any relevant login details provided to it by a publisher in relation to a request for work or works available behind a login facility.

Entitlement to delivery: on line work delivered by agreed alternative method

21.—(1) A deposit library is entitled to delivery of a copy of any work published online that it requests in respect of which there is an agreement between the publisher and the deposit library that the work will be delivered by an alternative method to web harvesting.

(2) A request under this regulation must be made in writing (whether sent by electronic or other means).

(3) The copy of any work subject to a request under this regulation must be delivered within 14 days of the request.

(4) The copy delivered pursuant to regulation 21(1) must be of a quality most suitable for preservation purposes.

(5) The quality most suitable for preservation purposes may be as agreed between the publisher and the deposit library or, in the absence of any agreement, a quality which the publisher decides.

Delivery of additional information

22. The publisher of a work delivered under regulation 19 or regulation 21 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 person 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.

On line work: published in the United Kingdom

23.—(1) Subject to sub-paragraph (2) below, 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 denied to persons within 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) above, that manner of connection with the United Kingdom is also prescribed for the purposes of section 10(5)(b) of the 2003 Act.

PART 4

Permitted Activities

Use etc. of relevant material by deposit libraries

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

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

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

26. [The National Library of Scotland] may dispose of any relevant material that is an off line legal publication by transferring it permanently to the Faculty of Advocates.

27. [The National Library of Scotland] may transfer or lend any relevant material that is an on line legal publication with the Faculty of Advocates.

Reader access to relevant material

28. A deposit library must limit access of the same relevant material to one computer terminal at any one time.

29. In the case of relevant material which is work published on line, 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.

30.—(1) A publisher may make a written request (whether sent by electronic or other means) to a deposit library to withhold access of certain 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 written request does not exceed three years from the date the relevant material was delivered to the deposit library;
- (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 —
 - (i) conflict with the normal exploitation of the work; and
 - (ii) unreasonably prejudice the legitimate interests of the publisher.

(3) The period during which a deposit library must not allow a reader to view relevant material pursuant to paragraph (1) may be extended by a further request made under that paragraph.

(4) If a further request under paragraph (1) is made, it must be made within the period which begins six months before and ends two weeks before the date on which the deposit library would otherwise allow a reader to view the relevant material that is the subject of the request.

Reader access to relevant material: visually impaired persons

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 must only allow one accessible copy of the same relevant material to be accessed 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 acknowledgement.

(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 to 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 subparagraph (1) or lending or transferring an intermediate copy under paragraph (5), 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.

Supplying copies for research etc.

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

(2) Those conditions are that—

- (a) the deposit library is satisfied that the copy is required by that person for the purposes of non-commercial research or private study or parliamentary or judicial proceedings or a Royal Commission or statutory inquiry and will not be used for any other purpose;
- (b) that person has delivered to the deposit library a signed declaration in writing in relation to the relevant material substantially in accordance with Form A in the Schedule to these Regulations;
- (c) the deposit library is satisfied that the requirement of the person requiring the copy is not related to any similar requirement of another person.

(3) For the purposes of paragraph (2)(c)—

- (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)(b) 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) and may rely on it in relation to paragraph (2)(c).

33.—(1) The supply by a deposit library of a copy of relevant material under regulation 32 is subject to the following provisions of this regulation.

(a) 1988 c.48.

(2) A deposit library must supply the copy of the relevant material in print unless the publisher has given permission for the deposit library to produce and supply the copy in another medium specified by the publisher.

(3) A deposit library must not supply a person with more than one copy of the same relevant material.

(4) The copy of the relevant material supplied by a deposit library must not represent more than a reasonable proportion of the wider relevant material of which the element copied forms a part.

(5) 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.

(6) 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 preservation purposes

34.—(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.

Adapting relevant material for preservation purposes

35.—(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 34) 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.

Disposing of relevant material

36.—(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 preservation purposes.

Name
Title

Date

Department

DRAFT

SCHEDULE

Regulation 32

Form A

Declaration: Copy of relevant material

1. To the deposit library of (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][parliamentary or judicial proceedings][a Royal Commission or statutory inquiry] (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)

DRAFT