

EXPLANATORY MEMORANDUM TO
THE LEGAL DEPOSIT LIBRARIES (NON-PRINT WORKS) REGULATIONS 2013

2013 No. XXXX

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Under the current legal deposit regime every printed work that is published in the UK is deposited with the British Library and, upon request, with five other legal deposit libraries. These regulations extend that regime so that, in addition to printed works, it also covers non-print works, that is, works published in a medium other than print.

2.2 Work published in a medium other than print means work published on line (such as content from the internet, an e-book or an electronic journal) or work published off line (that is, published in a physical form other than print such as a CD-ROM, DVD-ROM or microfilm).

2.3 The extension of legal deposit to non-print works is designed to ensure that the UK's non-print published output (and thereby the UK's intellectual record and published heritage) is preserved as an archive for research purposes, while also reducing the costs of legal deposit to publishers overall.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is being made to extend the obligation of legal deposit to non-print works, as anticipated by the parent Act, the Legal Deposit Libraries Act 2003 ("the 2003 Act"). This is the first time that the powers in the 2003 Act to make regulations in relation to works published in a medium other than print have been exercised.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Secretary of State for Culture, Media and Sport has made the following statement regarding Human Rights:

“In my view the provisions of the Legal Deposit Libraries (Non-Print Works) Regulations 2013 are compatible with the Convention rights”

7. Policy background

- 7.1 The British Library along with five other libraries (the National Library of Scotland, the National Library of Wales, Cambridge University Library, the Bodleian Library, Oxford, and Trinity College Library, Dublin) have the status of legal deposit libraries and they are entitled to receive a copy of every work published in print in the UK. The emergence, in particular, of the internet as an important record of national and world events has led to a growing concern from the legal deposit libraries and the wider research sector that this material will not be preserved for future generations. The 2003 Act creates a framework in which regulations may be made for the deposit of non-print works, such as work published on the internet or work published in CD-ROM format.
- 7.2 The policy objective of this instrument is to allow the preservation of the UK's non-print published output for future generations. The deposit of works from the internet will be done primarily through a process known as “web harvesting”. This is typically an automated process in which a computer fitted with specialist software requests content from a target website and the website responds automatically, delivering a copy of that content back to the requesting computer.
- 7.3 The regulations also cover the situation where a printed work is, in addition to being published in print, also published in a non-print format. In such instances, the publisher under the regulations will be obliged to deposit the printed version; but if the publisher and the deposit library agree, the publisher may instead deposit the work in the non-print format. The aim of this is to allow the publisher and the deposit library to benefit from costs savings.
- 7.4 The Department has considered non-statutory alternatives to this instrument, such as voluntary deposit schemes for non-print works. These have not been taken forward, however, as they would not adequately resolve the issue of a growing gap in the comprehensiveness of the archives and records of the UK's digitally published output.
- 7.5 These regulations do not amend another instrument; therefore no consolidation of legislation is required.

8. Consultation outcome

- 8.1 A 12 week public consultation on the draft regulations was held between February and May 2012. The consultation responses provided general support for the policy

objective of preserving the UK's non-print published output and the proposed regulations were broadly welcomed.

- 8.2 The main concerns related to the scope of material to be deposited, the restrictions on access to material in the legal deposit libraries' archives, and the security and integrity of the archived material. The Department addressed these concerns primarily by providing further guidance and explanation to stakeholders and, where appropriate, making small changes to the drafting of the regulations. In addition, the Department clarified and improved the way the web harvesting process will work by making minor drafting changes.
- 8.3 The Department acknowledged the concerns from some respondents over the restrictions on access to material deposited under the regulations continuing to apply following the expiry of copyright, but given that this will not have any immediate practical impact, the Department considered that revisiting the issue as part of a post-implementation review of the regulations would be the most effective solution.
- 8.4 In response to other feedback, the Department considered it appropriate to amend the conditions under which deposit libraries may supply a copy of relevant material to include criticism, review and news reporting. This brought the regulations more closely in line with 'fair dealing' exceptions under copyright legislation while maintaining the balance between the needs and interests of the main stakeholder groups.
- 8.5 The Department also noted arguments against the exemption from the regulations of new businesses and micro-businesses (businesses with fewer than 10 employees) until April 2014. The Department, however, considered that it was important to take steps to avoid any new potential burdens on the smallest businesses for an initial period, in keeping with the Government's moratorium policy on new and micro-businesses.
- 8.6 A detailed analysis of the consultation outcome is at the Department for Culture, Media and Sport website - <http://www.culture.gov.uk/publications/9322.aspx>

9. Guidance

- 9.1 The Department for Culture, Media and Sport has prepared a non-statutory guidance document to explain in greater detail how the regulations will operate. Copies of this guidance document have been deposited in the libraries of each House.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is that, to the extent that such bodies publish work in a medium other than print, they will be obliged to

deliver the work on request to a deposit library. In terms of economic impact, the regulations are assessed as presenting an overall saving to publishers, albeit that in considering separately the deposit of works published on line and works published off line, the off line element is a marginal net cost to publishers and the on line element is a comparatively larger net saving.

- 10.2 The impact on the public sector is that costs will arise for legal deposit libraries from additional archiving activities and, in particular, from setting up and maintaining the web harvesting system for the collection of on line works. The main benefits to deposit libraries are being able to collect on line works systematically to produce a shared archive of non-print works, and the potential savings that can be made from no longer needing to archive a proportion of printed works.
- 10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to exempt until April 2014 new businesses, which are likely to have fewer than 20 employees, and micro-businesses from those specific regulations which have the potential to impose a cost burden.
- 11.3 The basis for the final decision on what action to take to assist small business is as follows. Whilst the impact assessment shows that the legal deposit of non-print works will reduce a regulatory burden on the wider publishing industry, the current evidence suggests that the regulations would present a small net cost for micro-businesses, averaging £26 per annum. Therefore, consistent with the Government's moratorium on new legislation for new businesses and micro-businesses, publishers who are new businesses and those employing fewer than 10 people will be exempt from those regulations which may give rise to a new cost for publishers. When deposit libraries make a written request for a non-print work, they will be expected to include guidance that the publisher is not required to comply with the request if they are exempt as a micro-business or new business.
- 11.4 In calculating the number of employees of a business under regulation 9, the phrase "contracted to work" means that if an employment contract is silent about breaks, then all the hours contracted count, so the figure is gross of breaks. If the employment contract sets out working hours and separately covers breaks, then the hours count net of breaks.
- 11.5 For the purposes of this instrument, the reference in regulation 9 to the total number of hours per week for which employees are contracted to work means the

hours specified in the employment contract and does not include any additional hours which employees may actually work. Agency workers will only count as employees of the business if they are employed by or for the purposes of the business under a contract of employment.

- 11.6 The method in regulation 9 of calculating the number of full time equivalent employees (by dividing the contracted number of hours per week that all employees work by 37.5) is solely intended for the purpose of determining whether the exemption for micro-businesses applies. This method has no application in employment law. In addition, it does not reflect the Government's position on the status of employment by reference to number of hours worked, nor on what an ordinary or average working week consists.

12. Monitoring & review

- 12.1 Implementation of the regulations will be monitored for impact and effectiveness. A post-implementation review will be carried out within five years of the regulations coming into force and a report will be published. The review will consider the extent to which the principal policy objective of allowing the preservation of the UK's non-print published output has been achieved by the implementation of the regulations. This will include an assessment of the number of non-print works deposited against the estimated overall number of works which may be subject to legal deposit.

13. Contact

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