
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⁽¹⁾, 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 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

(1) 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.

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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 be 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.

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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\(2\)](#), as amended by Directive [98/48/EC\(3\)](#).

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://>

(2) OJ No. L 204, 21.7.1998, p.37.

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

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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/>.