

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC LENDING RIGHT SCHEME 1982 (COMMENCEMENT OF**  
**VARIATIONS) (NO. 2) ORDER 2023**

**2023 No. 1068**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of His Majesty

**2. Purpose of the instrument**

- 2.1 This instrument brings into force variations of the Public Lending Right Scheme to remove certain requirements relating to the collection of sample data regarding book loan numbers, to enable the British Library to increase the sample size with the option to move to collecting comprehensive loans data from all library authorities in the UK; and to remove the requirement, in certain circumstances, for an application for registration of a posthumously eligible book to be made by the deceased author's personal representatives.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Public Lending Right Act 1979 ("the 1979 Act") provided for the Secretary of State to prepare a scheme under which authors would have a right (known as the "public lending right", or "PLR") to receive payments from a central fund based on the number of times their books are lent out by public libraries. The Public Lending Right Scheme ("the Scheme") was prepared and laid before Parliament and, having been approved by a resolution of each House, was brought into force by the Public Lending Right Scheme 1982 (Commencement) Order 1982 (S.I. 1982/719). The Scheme was set out in the Appendix to that Order. Under the provisions of the 1979 Act, the Board of the British Library ("the Board") is responsible for administering the Scheme.

- 6.2 Section 3(7) of the 1979 Act provides the Secretary of State with a power to vary the Scheme, and to bring such variations into force by statutory instrument. The most recent variation of the Scheme was brought into force by the Public Lending Right Scheme 1982 (Commencement of Variation) Order 2023 (S.I. 2023/21).
- 6.3 This Order brings into force further variations to the Scheme made by the Secretary of State. The variations amend the Scheme, firstly, to remove certain requirements regarding the collection of sample data in relation to book loan numbers, enabling the British Library to increase the sample size with the option to move to collecting comprehensive loans data from all library authorities in the UK; and secondly, to remove the requirement, in certain circumstances, for an application for registration of a posthumously eligible book to be made by the deceased author's personal representatives.

## **7. Policy background**

### *What is being done and why?*

#### Changes to sampling requirements under the Scheme

- 7.1 The Scheme provides for the payments due to authors in respect of each financial year to be calculated by reference to the number of "notional loans" of each eligible book from public libraries in the UK in the "sampling year" or "Scheme year" (1 July to 30 June) which ended in that financial year. The number of notional loans is an estimate of the total number of loans of the book, based on loans data collected from a sample of public library authorities in the UK (known as "sampling points"). These sampling points are designated by the British Library.
- 7.2 The Scheme currently specifies a number of requirements in relation to the designation and rotation of sampling points (i.e. the number of sampling points and how they are spread across the different regions, or "groups", in the UK). During each Scheme year at least seven out of the 30 operative sampling points are required to be replaced, and no operative sampling point is allowed to remain for a continuous period of more than 4 years unless it is in Northern Ireland.
- 7.3 The total number of notional loans of a book is the aggregate of the number of notional loans of the book in each group. The number of notional loans of a book in a group is determined by 'grossing up' the actual loans data obtained from the sampling points in that group, using the total number of loans of all books from all public libraries in that group in the financial year ending in the relevant Scheme year.
- 7.4 There are increasing challenges in securing reliable and accurate annual total library loans figures for the purposes of carrying out the grossing up element of the calculation of notional loans. The response from local authorities to the Chartered Institute of Public Finance and Accountancy's annual library questionnaire has fallen from a rate of 92% in 2013/14 to around 45% in 2021/22. While the Board previously used historical data to estimate the missing data, the extent of the fall in response rates has meant this is no longer viable, so it has become necessary for the British Library to move to requesting total loans figures directly from many library authorities.
- 7.5 Should the current approach remain, the grossing up process carries a risk of becoming less representative as it is dependent on the accuracy of the national loans information from CIPFA's annual public libraries statistics.

- 7.6 In addition, it is becoming increasingly difficult to select operative sampling points to meet the legislative requirement for rotation, due to the increase in the number of consortia and the move towards national library management systems. Furthermore different approaches to the collection of book loans data are currently used in different parts of the UK. Actual book loans data is collected for Northern Ireland, but only a sample of book loans is collected from local authorities for the rest of the UK.
- 7.7 The variations commenced by this Order will amend the Scheme so that it is less prescriptive regarding designation of sampling points, by removing the requirement for at least seven operative sampling points to be replaced in each year, and the restriction on operative sampling points remaining in use for a continuous period of more than 4 years. This will enable the Board to increase the sampling size used, and provide the option to move to collecting actual book loans data directly from all local authorities in the UK. These changes are expected to make the loans data more comprehensive and accurate, and will help to ensure that the calculation of PLR payments is based on consistent, comprehensive, accurate and timely data.

*Changes in relation to the registration of posthumously eligible books*

- 7.8 In some circumstances a book can be registered for the PLR following the author's death (known as a "posthumously eligible book"). A posthumously eligible book can be registered if the author had registered at least one book under the Scheme during their lifetime, and the posthumously eligible book was published within one year before, or up to ten years after, the date of the author's death. Currently, such an application can only be made by the personal representatives of the deceased author, not by the person entitled to inherit the PLR in the work (unless that person is the personal representative of the author). The personal representative must provide documentation evidencing their authority to deal with the author's estate (such as the probate or letters of administration) and provide a signed statement confirming that the conditions of eligibility are satisfied.
- 7.9 In many cases, the person entitled to the PLR in respect of a posthumously eligible book will previously have received a transfer of the PLR in respect of one or more books which were registered during the deceased author's lifetime. The Scheme requires the application for such a transfer to be made by the author's personal representatives, and requires them to provide the documentation evidencing their authority to deal with the author's estate.
- 7.10 The variations commenced by the Order will remove the requirement, in certain cases, for an application for registration of a posthumously eligible book to be made by the personal representatives of the deceased author. The exemption will apply where the following conditions are satisfied: (i) the person making the application is already the registered owner of the PLR interest in one or more of the deceased author's books; and (ii) when the PLR interest in respect of those books was transferred, the deceased author's personal representatives gave a declaration confirming that they were not aware of any other person who might be entitled to the PLR interest in respect of any posthumously eligible books by the author. In addition, on applying for registration of the posthumously eligible book, the applicant will be required to provide a signed statement confirming that the conditions of eligibility are met.
- 7.11 The proposed change is intended to provide a more efficient process in cases where the British Library already has sufficient information to be satisfied that the applicant

is entitled to the PLR interest in the posthumously eligible book. This will remove unnecessary and burdensome administration for the Board and eligible applicants.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

- 9.1 The Department does not intend to consolidate the Scheme variations at this time.

## **10. Consultation outcome**

- 10.1 The proposed changes were the subject of a consultation from 28 June to 6 August 2023. The consultation was sent directly to 152 local authorities in England, to the Scottish and Welsh Governments, who forwarded it to their local authorities on behalf of DCMS, and to the Northern Ireland Executive's Department of Communities and Libraries NI (the Northern Ireland Library Authority). It was also sent directly to 12 organisations representative of authors, public libraries and other key stakeholders relating to the public library sector in the UK. The consultation document was also made available to the public on the GOV.UK website.

- 10.2 A total of 106 online responses were started, of which 79 were fully submitted. Not all respondents answered all the core and impact questions. There were different impact questions based on the type of respondent and most of the questions were optional. The 106 online responses which started were from 40 local authorities, 34 authors and 32 others. Incomplete responses were included in the analysis, except for three incomplete responses which were removed as they were identified as duplicates. Overall, the vast majority of those that responded to the proposal to change the sampling requirements agreed with the change, while a significant majority that responded to the proposal related to the application for posthumous registration agreed with the change.

- 10.3 In relation to the Department's engagement with the Devolved Administrations about the proposed variation, in accordance with long established practice in this area, the Department consulted in particular with Northern Ireland, as the subject matter of the Public Lending Right is a transferred matter in respect of Northern Ireland. Northern Ireland's Department for Communities responded, separate to the consultation, to confirm it is supportive of the proposed technical amendments. The administrations in both Scotland and Wales also responded separately to the consultation indicating they were supportive of the proposed changes.

## **11. Guidance**

- 11.1 The Department will notify the Board when the Scheme has been amended. The Board will use its regular communications to authors and other stakeholders to ensure that they are made aware of the amendments.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies. This analysis has been based on responses from the consultation detailing estimates of the impact of the proposed change in creating one-off familiarisation, implementation & training costs, and additional increases to annual book data handling costs.

- 12.2 There is no significant impact on the public sector. This analysis has been based on responses from the consultation detailing estimates of the impact of the proposed change in creating one-off familiarisation, implementation & training costs, and additional increases to annual book data handling costs.
- 12.3 A full Impact Assessment has not been prepared for this instrument because this instrument is out of scope of the Better Regulation Framework under Section 22(4)(c) of the Small Business Enterprise and Employment Act 2015: "A "regulatory provision" does not include a statutory provision if or to the extent that it makes or amends provision in connection with the giving of grants or other financial assistance by or on behalf of a public authority." On this basis, proportionate analysis has been conducted based on responses to the consultation.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses. For the purpose of this statutory instrument, we have considered all authors to be small or micro businesses.
- 13.2 The effect of this instrument is to enable more accurate data to be collected for use in calculating the payments due to authors under the Scheme, and to remove certain administrative requirements in relation to the registration of posthumously eligible books in some cases. Therefore, no specific action is necessary to minimise the impact on small businesses.

### **14. Monitoring & review**

- 14.1 The implementation of these changes will be monitored by the Board in the light of new evidence, and the Department for Culture, Media and Sport will consider whether the Scheme should be the subject of further amendment in future.

### **15. Contact**

- 15.1 Nigel Wakelin at the Department for Culture, Media and Sport (email: [nigel.wakelin@dcms.gov.uk](mailto:nigel.wakelin@dcms.gov.uk)) can answer any queries regarding the instrument.
- 15.2 Laura Jackson / Louise Smith, Deputy Director for Arts and Libraries at the Department for Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Parkinson of Whitley Bay, Minister for Arts and Heritage, at the Department for Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.