Draft Regulations laid before Parliament under section 11(6) of the Legal Deposit Libraries Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

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(**1**).

The Secretary of State has consulted the deposit libraries(**2**) 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(**3**).

The Secretary of State is satisfied that as regards the restriction by section 7 of the Act (having regard to these Regulations) of activities in relation to relevant material(**4**), the restriction of those activities under the laws of Ireland is not substantially less.

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 is satisfied that as regards the protection from liability under subsections (3) and (4) of section 10 of the Act, the protection under the laws of Ireland in relation to corresponding liability 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 and approved by a resolution of each House of Parliament.

(**1**) 2003 c.28. Section 10(6) of the Act, to which section 10(5) of the Act refers, was amended in relation to England and Wales and Northern Ireland by Part 2 of Schedule 23 to the Coroners and Justice Act 2009 (c.25) and in relation to Scotland by paragraph 72(e) of Schedule 7 to the Criminal Justice and Licensing (Scotland) Act 2010 (2010 asp 13) to reflect changes made to common law libel offences.

(**2**) "Deposit library" is defined in section 14 of the Act.

(**3**) The requirement in section 12(5) of the Act 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).

(**4**) "Relevant material" is defined in section 7(5)(b) of the Act.

PART 1

Introductory

Citation and commencement

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

(2) They come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"the Act" means the Legal Deposit Libraries Act 2003;

"computer terminal" means a terminal on library premises controlled by the deposit library from which a reader is permitted to view relevant material;

"database right" has the same meaning as in regulation 13 of the Copyright and Rights in Databases Regulations 1997(**5**);

"IP address" means internet protocol address;

"permanent collection" means the permanent collection held by a deposit library of non-print work delivered or copied under these Regulations;

"personal data" has the same meaning as in section 1 of the Data Protection Act 1998(**6**);

"publisher" means, in relation to a work to which the Act applies, the person to whom the obligation in section 1(1) of the Act applies in respect of that work;

"web harvester" means a computer program which is used to search the internet in order to request delivery of on line work on behalf of a deposit library;

a reference to "in writing" includes text which is—

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference;

a reference to a deposit library (whether or not to a specific deposit library) includes a person acting on behalf of the deposit library.

3. In regulations 20 and 23 to 31 references to a deposit library include reference to the Faculty of Advocates.

(**5**) S.I. 1997/3032.
(**6**) 1998 c.29.

PART 2

Exemption for existing micro-businesses and new businesses

The exemption

4.—(1) During the exemption period, regulations 13(1)(a), 14(2), 15, 16(3) to 16(7) and 17 do not apply in relation to a work published in a medium other than print where a person publishes the work in the course of a business, if the business is—

(a) an existing micro-business, or

(b) a new business.

(2) In relation to a work published off line that is subject to the exemption in paragraph (1)—

(a) paragraphs (1) and (2) of regulation 15 shall not require delivery of any such work;

(b) paragraph (3) of regulation 15 shall have effect as if it provided for the British Library Board (in addition to other deposit libraries) to be entitled to delivery of the work if it requests it, and paragraphs (4) to (10) of that regulation have effect accordingly.

Micro-businesses

5. A micro-business is a business that has fewer than 10 employees (see regulations 9 to 11).

Existing micro-businesses

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

New businesses

7.—(1) A new business is a business which a person, or a number of persons, ("P") begins to carry on during the period beginning with the commencement date and ending with 31 March 2014.

(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 (4)).

(3) Paragraph (2)(a) does not apply if the other business referred to in that paragraph was a new business (within the meaning of this regulation).

(4) 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.

(5) 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) P begins to carry on the business 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 paragraph (i) and partly as mentioned in paragraph (ii).

(6) Paragraph (2)(b) does not apply if the activities referred to in paragraph (4) were, when carried on by the person who is not P referred to in that paragraph, activities of a new business (within the meaning of this regulation).

(7) 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 during the period beginning with the commencement date and ending with 31 March 2014) 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.

(8) "Arrangements" includes an agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

The exemption period

8.—(1) The exemption period in relation to an existing micro-business starts with the commencement date and ends with 31 March 2014.

(2) The exemption period in relation to a new business starts with the date on which P begins to carry on the business and ends with 31 March 2014.

Number of employees of a business

9. For the purposes of this Part, the number of employees of a business is calculated as follows—

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

10. For the purposes of this Part, the employees of a business are the persons who are employed for the purposes of the business.

Employees

11.—(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.

The commencement date

12. 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

13.—(1) The Act applies to the following descriptions of work published in a medium other than print—

(a) work that is published off line, and

(b) work that is published on line.

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

(a) work consisting only of—

(i) a sound recording or film(**7**) or both, or

(ii) such material and other material which is merely incidental to it;

(b) work which contains personal data and which is only made available to a restricted group of persons; or

(c) work published before these Regulations were made.

(3) The description of work that is prescribed for the purposes of section 10(5)(a) of the Act is work that is published on the internet and that does not fall within the description given in paragraph (2)(a) or (b).

New and alternative editions

14.—(1) Where substantially the same work is published in the United Kingdom in print and in one or more non-print media, the duty under section 1(1) of the Act applies only in relation to its publication in print unless the publisher and the deposit library agree that instead the duty under section 1(1) of the Act applies in relation to its publication in one of the non-print media in which the work is published.

(2) Where substantially the same work is published in the United Kingdom in two or more non-print media (and is not published in print), the publisher and the deposit library may agree one of those non-print media as the medium in relation to which the duty under section 1(1) of the Act applies and, in the absence of agreement, the publisher may decide the non-print medium (which must be one in which the work is published) in relation to which the duty under section 1(1) of the Act applies.

Entitlement to delivery: off line work

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

(4) The following provisions apply to a request made under paragraph (3)—

(a) it must be in writing;

(b) it must be made—

(**7**) "Film" is defined in section 14 of the Act.