

*These notes refer to the Legal Deposit Libraries Act 2003 (c.28)
which received Royal Assent on 30 October 2003*

LEGAL DEPOSIT LIBRARIES ACT

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Legal Deposit Libraries Act 2003. They have been provided by the Department for Culture, Media and Sport in order to assist the reader in the understanding of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act, so where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act re-enacts (with minor amendments) the existing obligation to deposit printed publications in six nominated depositories (which are known as legal deposit libraries), and enables the Secretary of State to make regulations extending the system of legal deposit to non-print material.

BACKGROUND

4. Under section 15 of the Copyright Act 1911, a copy of each book or serial or other printed publication which is published in the UK is required to be deposited, free of charge, in the British Library. In addition, five other libraries (the National Libraries of Scotland and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin) are each entitled to receive, on request, one free copy of any book or other printed publication published in the UK. These libraries, together with the British Library, are collectively known as the legal deposit libraries (or deposit libraries).
5. Section 15 of the Copyright Act 1911 applies only to works in printed form. Since the development of new media and the growth of publication in non-print forms, the existing legislation has ceased to be adequate to ensure the continuation of a comprehensive archive of the nation's published material.
6. The main purpose of the Legal Deposit Libraries Act 2003 is to give the Secretary of State power to extend the system of legal deposit progressively and selectively to cover various non-print media as they develop, including off-line publications (e.g. CD ROMS and microforms), on-line publications (e.g. e-journals) and other non-print materials. This will ensure that publications of significance are collected, regardless of the medium in which they are published, and are preserved as part of the national archive of UK publications, so as to remain available to future generations of eligible users. It is assumed that initial regulations will be restricted to off-line publications.

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OVERVIEW

7. The Act has 17 sections: sections 1-3 set out the duty to deposit and the method of enforcing that duty; sections 4 and 5 preserve the existing framework set out in section 15 of the Copyright Act 1911 regarding print; sections 6 - 8 set out the framework for non-print publications; sections 9 and 10 deal with exemptions from liability for the publishers and the libraries; sections 11 – 13 deal with the making of regulations. The final sections deal with general matters of interpretation (section 14), consequential amendments, repeals and revocations (section 15), commencement and extent (section 16) and short title (section 17).

8. The Act does not confer functions directly on the National Assembly for Wales, but section 12 requires the Secretary of State to obtain the consent of the Assembly or of the Scottish Ministers for some purposes, or to consult them, and section 16 requires the Secretary of State to consult them before bringing provisions of the Act into force (see paragraphs 33, 34 and 39).

COMMENTARY ON SECTIONS

Duty to Deposit

Section 1: Deposit of publications

9. This section imposes a duty on publishers to deposit any published material with the deposit library (or libraries) that is (or are) entitled to receive a copy of that material in the medium in which it is published (except for on-line publications, where the medium of deposit may be specified in regulations under section 6(2)(h)). Such deposit must be at an address in the United Kingdom to be specified by the library (or else, in the case of electronic material, at an electronic address).

10. The section describes the types of printed material that must be deposited, and provides that non-print works that are prescribed by Regulations must also be deposited. Subsection (5) addresses the issues of sound and film recordings, and means that there are limited circumstances under which these will be covered: when they are incidental features of the main body of a work and not its purpose.

Section 2: New and alternative editions

11. This section addresses the issue of duplicate publications. The effect of subsection (1) is that it is not necessary to deposit a new edition of a work if it is substantially the same as one already published in the same medium. Subsection (3) enables the Secretary of State to determine the circumstances under which a work is to be considered 'substantially the same' as a previously published work and subsection (2) enables her to determine which medium should be deposited where the same work is published (or works that are substantially the same are published) in different media.

Section 3: Enforcement

12. This section lays out those measures that can be taken if a publisher fails to deposit. The library will be able to apply to the county court (or to the sheriff court in Scotland) for an order requiring deposit. In those instances where such an order

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would not be effective or appropriate, the court may make an order requiring the publisher to make a payment of not more than the cost of making good the failure to comply.

Printed Publications

Section 4: Printed publications: the British Library

13. This section re-enacts the entitlement of the British Library Board to receive a copy of every work published in print. The copy must be delivered to the British Library within a month of publication; the copy must be of the same quality as the best copies published in the United Kingdom at that time; and the British Library Board must provide a receipt for the deposited printed works received.

Section 5: Printed publications: other libraries

14. This section re-enacts the entitlement of the other five deposit libraries (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) to request a copy of each printed work. Such request must be in writing, may be made before publication but may not be made more than 12 months after publication and can cover all future numbers or parts of an encyclopaedia, newspaper, magazine or other work. The deposit must be made within a month of publication or of receipt by the publishers of the request. The copy deposited must be of the same quality as the largest number of copies published in the United Kingdom at the time of delivery.

Non-Print Publications

Section 6: Regulations: deposit of non-print publications

15. This defines the regulations that the Secretary of State can make in relation to the deposit of non-print material. *Subsection (1)* gives a general power to the Secretary of State to make regulations regarding the duty to deposit non-print material. *Subsection (2)* sets out some particular things that the Secretary of State may include in regulations: to determine how and when a non-print publication must be deposited; an obligation to provide the information necessary to make the work accessible; the timing of deposit; the means of delivery of the work; the quality of the copy; the format of deposit (where a work is published in different formats); provision to determine which on-line publications are to be considered as published in the UK (and can therefore be subject to the duty to deposit under section 1(1)); and provision specifying the medium in which such publications are to be delivered.

Section 7: Restrictions on activities in relation to non-print publications

16. This provides that the libraries, persons acting on their behalf and readers may not do any of the activities listed in *subsection (2)* – using the material, copying it, adapting any accompanying computer program or database, lending it to a third party, transferring it to a third party, disposing of it – unless authorised by regulations.

17. Under *subsection (4)* those regulations may in particular make provision about the purposes for which the deposited material may be used; the time at which readers may first use the material (thereby allowing embargoes to be established); the

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description of readers that may use the material and limitations on the number of readers that may use the material at any one time (which will enable cross-library limits to be imposed if there is a secure network, in addition to limiting the number of people that may access the material simultaneously in any particular library).

18. Subsection (5)(d) provides that the Faculty of Advocates, which acts as the deposit library for legal publications in Scotland, is deemed to be a deposit library for these purposes in respect of the legal publications it holds.

19. Subsection (6) provides that a contravention of the section will be actionable as a breach of statutory duty.

Section 8: Activities in relation to non-print publications

20. This section inserts section 44A, a new exception to copyright, into Chapter 3 of Part 1 of the Copyright, Designs and Patents Act 1988 so that activities permitted by regulations made under section 7 will not infringe copyright. As non-print material may also or alternatively be protected by database right, this section additionally inserts a new exception to database right into the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) in respect of activities permitted by regulations made under section 7.

21. New section 44A also provides a power to make regulations under the 1988 Act to stop one or more of the exceptions to copyright in Chapter 3 of Part 1 of the Act applying, or restrict the way they apply, to non-print material covered by section 7. These regulations could be used to ensure that copyright exceptions apply no more generously to deposited material than to material that has been purchased, for example, copyright material published online which may only be available in normal libraries under a contract that removes the ability to enjoy some copyright exceptions, so that all readers must pay for any material they copy.

Exemption from liability

Section 9: Exemption from liability: deposit of publications etc.

22. The effect of this section is that compliance with *section 1*, will be taken not to breach any contract relating to any part of the work nor to infringe any copyright, publication right database right or patent in any part of the material.

Section 10: Exemption from liability: activities in relation to publications

23. The effect of this section is that any liability of deposit libraries for defamation resulting from activities relating to deposited material within the libraries will arise only where they know or ought to know that the material is defamatory, and have had a reasonable time to prevent that use.

24. A publisher will not be liable for defamation arising out of activities relating to the material within the libraries unless it knows or ought to know that the material is defamatory, and has had a reasonable opportunity to inform the libraries of this, but has not done so.

25. *Subsection (5)* makes provision for regulating “web harvesting” by deposit libraries, that is copying material directly from the internet. Where the copying is in

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accordance with regulations under this subsection, the restrictions and exemptions created by sections 7 and 8 and *subsection (6)* of this section will apply. The regulations will set out the description of works that may be so copied (which must have a connection with the United Kingdom), and any conditions imposed on the copying.

26. Under *subsection (6)*, only the libraries can be liable for defamation arising out of material so copied, and they will only be liable in the same circumstances as for material that is deposited.

27. To ensure, where necessary, that depositors of publications do not incur additional liabilities as a consequence of access through deposit libraries, *subsection (8)* enables the Secretary of State to make regulations extending the exemption from liability for defamation to other liabilities.

28. *Subsection (10)* provides that the section does not impose any liability. So it does not make any deposit library liable for defamation arising out of accessing this material.

Regulations

Section 11: Regulations: general

29. This enables different provisions to be made for different purposes, including for different media, descriptions of work, deposit libraries and areas, and allows for regulations applying only in some cases or subject to exceptions. Regulations may not be made unless the Secretary of State has consulted the deposit libraries and the publishers likely to be affected. In addition the Secretary of State intends to establish an advisory panel made up of members of the deposit libraries, the publishing industry and others, to advise her on all aspects of the regulations.

30. Regulations applying the Act to non-print material (made under *section 1(4)* and under *section 6*) must not apply to works published before the regulations are made.

31. Regulations applying the Act to non-print material and those dealing with duplicate works (made under *section 2*) may only be made where the Secretary of State considers that the costs likely to be incurred by the publishers are not disproportionate to the benefit to the public arising from the deposit of the works.

32. Regulations applying the Act to non-print material, dealing with duplicate works, dealing with use of the material (under *section 7*), or providing for web harvesting (under *section 10(5)*) may only be made where the Secretary of State considers that they do not unreasonably prejudice the interests of the publishers.

33. All regulations must be approved in draft by both Houses of Parliament before being made.

Section 12: Regulations: Scotland and Wales

34. Regulations may not be made without the consent of the National Assembly for Wales or the Scottish Ministers, where the regulations remove or do not confer entitlements on the National Library of Wales or Scotland, respectively. There will be

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no obligation to obtain that consent in relation to electronic publications where the National Libraries (or the Faculty of Advocates in the case of legal publications) have access to the publications by electronic means.

35. In all other cases the National Assembly and the Scottish Ministers must be consulted if the regulations would affect the National Libraries in any way.

Section 13: Regulations: Trinity College, Dublin

36. Publishers can only be required to deposit non-print material with Trinity College, Dublin if the Secretary of State is satisfied that restrictions on use of the material under Irish law are not substantially less than those provided by *section 7*, that the protections of intellectual property rights in the material under Irish law is not substantially less than that provided under the laws of any part of the United Kingdom, and that the protection from liability under Irish law is not substantially less than that provided by *subsections (3) and (4) of section 10*.

General

Section 15: Consequential amendments, repeals and revocations

37. This sets out the consequential amendments to the National Library of Scotland Act 1925, providing for legal publications to be deposited with the Faculty of Advocates, and together with the Schedule, those provisions which are to be repealed or revoked as they are superseded by the Act.

Section 16: Commencement and extent

38. On commencement see below. The Act extends throughout the UK.

COMMENCEMENT

39. The provisions of the Act, other than section 16 and the powers to make regulations (these powers and section 16 come into force on Royal Assent), will be brought into force by Order made by the Secretary of State after consultation with the Scottish Ministers and the National Assembly.

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HANSARD REFERENCES

40. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Presentation and First Reading	11 December 2002	Vol 396 Col 286
Second Reading	14 March 2003	Vol 401 Col 577
Committee	4 June 2003	Standing Committee F Col 3
Report Stage and Third Reading	4 July 2003	Vol 408 Col 671
<i>House of Lords</i>		
Introduction	7 July 2003	Vol 651 Col 12
Second Reading	12 September 2003	Vol 652 Col 561
Committee	6 October 2003	Vol 653 Col 22
Third Reading	13 October 2003	Vol 653 Col 609

Royal Assent – 30 October 2003 House of Lords Hansard Vol 654 Col 375

House of Commons Hansard Vol 412 Col 415

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