

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC LENDING RIGHT SCHEME 1982 (COMMENCEMENT OF VARIATIONS) ORDER**  
**2014**

**2014 No. 1457**

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 The Public Lending Right (PLR) is the right of authors to receive compensatory payment for the loans of their printed books from public libraries in the UK. Its rules of operation are set out in the PLR Scheme .This Order extends the PLR Scheme so that it covers e-books downloaded on the premises of a public library, and audio-books borrowed from a public library and their producers and narrators.
  - 2.2 This Order sets out certain requirements in relation to such books so that writers, editors and translators and where relevant, producers and narrators (collectively referred to as ‘authors’) can demonstrate that they are eligible for payments under the Scheme. It establishes the shares of such payments to each category of author.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 The PLR was established by the Public Lending Right Act 1979 and the PLR Scheme was first set out in secondary legislation in 1982 (the Public Lending Right Scheme 1982 (Commencement) Order 1982, which has been amended).
  - 4.2 The European Union Rental and Lending Directive (2006/115/EC) gives certain rights holders an exclusive right to license or prohibit the lending of their works. However, Member States may derogate from the grant of this exclusive right provided that they remunerate rights holders for relevant loans.
  - 4.3 In the UK, lending rights are currently conferred upon authors, performers and producers by the Copyright Designs and Patents Act 1988 (the 1988 Act) allowing these rights holders to authorise or prohibit the lending of their works. These rights can be assigned or licensed to others by contract which can, in practice, give rise to a payment for such consent and/or an on-going arrangement to reflect the right to receive remuneration for lending.
  - 4.3 The 1988 Act provides that any eligible works currently lent under the PLR Scheme are lent without infringing copyright, and the PLR Scheme financially compensates eligible and registered authors for such ‘implied consent’ by making payments to authors on the basis of how often their books are borrowed from public libraries. The PLR Scheme is currently restricted to authors, editors and translators of printed books.

- 4.4 In order for public libraries to make loans of audio-books or e-books (see paragraph 7.1), the law has in the past required them to seek individual contractual arrangements from rights holders.
- 4.5 Extending the PLR Scheme to include new types of works and new types of rights holders removes the need for libraries to obtain consent for lending of newly eligible works. In exchange for this expanded 'exemption', the PLR Scheme will be required to remunerate the rights holders of newly eligible works where such rights holders are eligible and registered with the PLR Scheme.
- 4.6 PLR payments have not been made in respect of audio-book and e-book formats but this will be possible once the relevant provisions in the Digital Economy Act 2010 ('the DEA') are brought into force on the same day as this Order.
- 4.7 Section 43 of the DEA contains provisions to extend the Public Lending Right Act 1979 so that the term 'book' includes audio-book and e-book and the term 'author', in the case of a work recorded as a sound recording, includes a producer and narrator.
- 4.8 E-books downloaded outside the premises of a public library are not covered by the amendments to the PLR Scheme which are made in this Order. This is because remote downloads are not covered in the provisions of the DEA which extend the PLR as that would be beyond the exceptions to copyright currently permitted under EU law.

## **5. Territorial Extent and Application**

- 5.1 This instrument extends to the whole of the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

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

- 7.1 Audio and e-books are non-traditional book material available for loan in public libraries and from public library websites. Audio-books are physical entities that can be borrowed in person; these are very popular with people with visual impairments and difficulty in reading traditional books. E-books are electronic books available via a public library website by download. They are increasing in popularity with the most recent figures showing that issues of e-books for public libraries in England for 2012/13 was 803,085, an increase of 80.6% on the previous year.
- 7.2 This Order amends the PLR Scheme so that it covers e-books downloaded on the premises of a public library, audio-books borrowed from a public library, and their producers and narrators. In doing so, it ensures that the United Kingdom meets its obligation under the Rental and Lending Directive to ensure that relevant rights holders, as specified in national legislation, receive remuneration for loans of their works. In 2014, £6.1 million was distributed, equating to a rate per loan of 6.20 pence. A maximum payment per author of £6,600 applies.

- 7.3 Once the Order comes into force, public libraries will no longer have to enter into licences and contractual arrangements in order to make loans of audio-books and e-books downloaded on their premises. Instead, the authors of those books who are registered under the PLR Scheme will receive remuneration in the form of payments made under the PLR Scheme for loans of the books registered with the PLR Scheme.
- 7.4 It is intended that this approach will:
- (a) provide greater clarity and consistency in the arrangements governing remuneration of authors for the lending out of their works by public libraries;
  - (b) provide an independent means of ensuring that they and other rights holders receive appropriate remuneration for the free loans of their works;
  - (c) mirror the system for printed works in the PLR Scheme; and
  - (d) remove the burden of making contractual arrangements; and is intended to encourage greater acquisition and lending of such works by public libraries.
- 7.5 Any existing licences and contractual arrangements between libraries and authors can run their agreed term, unless both parties decide to terminate their arrangements and join the newly expanded PLR Scheme instead.
- 7.6 Authors will be able to register their works under the PLR Scheme at the point after any existing agreement or licence ends or is terminated. They must do this during the period from 1st July 2014 to 30th June 2015 period in order, potentially, to qualify for a PLR payment in February 2016.
- 7.7 The amendments to the PLR in this Order are intended to mirror, as far as possible, the existing arrangements for printed books.
- 7.8 There are instances, however, where the arrangements for registering audio-books and e-books and the apportionment of the PLR shares will need to be slightly different to reflect the fact that the current rules for establishing who is eligible for payments in relation to printed books do not always translate to audio-books and e-books.
- 7.9 In particular, eligibility of authors of printed books and e-books to PLR payments can be evidenced by being named on the title pages of printed books and e-books, but this does not work for audio-books as they do not have title pages.
- 7.10 Therefore, this Order provides that, in relation to audio-books, eligibility to payments under the PLR Scheme can be evidenced by: being named as an author within the book; reference to a written contract with the publisher; or by being named on the case in which the audio-book is lent.
- 7.11 Since the extension of the PLR Scheme to producers and narrators adds two new categories of authors who are potentially eligible for payments under the PLR Scheme, this Order establishes how the sum paid in relation to each book covered by the Scheme shall be apportioned.
- 7.12 This Order also amends the existing provisions of the Scheme so that the forms of application in respect of posthumously eligible books cover audio-books, e-books and narrators and producers. It also provides that when a producer or narrator for registration of an audio-book for payments under the PLR Scheme, they do not specify the shares to which they are entitled as these are fixed and set out elsewhere in the PLR Scheme.

7.13 Finally, where the PLR Scheme refers to the obligation on libraries to ‘mark’ books which are loaned, this terminology is amended so that the Scheme refers to books being ‘separately identified’. This is more appropriate now that the obligation covers e-books.

## **8. Consultation Outcome**

8.1 A four week public consultation on the Government’s proposals was conducted between 13th February and 13th March 2014. Views were invited from all persons and bodies considered appropriate. These included collecting societies, and other groups representative of rights holders and public libraries in the UK. There were 20 responses to the public consultation which comprised of: 3 individual rights holders, 5 organisations representing rights holders, 11 groups representing libraries and library authorities and 1 from The Department of Culture, Arts, and Leisure in Northern Ireland.

8.2 There was broad support for the majority of the proposals put forward although concerns were raised about points such as:

- i) the proposal that rights holders should prove their eligibility for payments under the Scheme by sending a copy of their contract with a publisher to the British Library Board who manage the PLR Scheme;
- ii) the proposal that all books registered under the PLR Scheme should have an ISBN number; and
- iii) the fact that the PLR Scheme is not currently being extended to cover books downloaded from outside a library’s premises.

8.3 The concern about rights holders having to prove their eligibility by providing a copy of the contract with the publisher has been addressed by removing this as a requirement in every case. However, whilst the market is evolving, the requirement for e-books and audio-books to have ISBNs in order to qualify for registration under the PLR Scheme will be maintained.

8.4 As mentioned above (see paragraph 4.8) e-books downloaded outside the premises of a public library are not covered by the amendments to the PLR Scheme which are made in this Order. This is because remote downloads are not covered in the provisions of the DEA which extend the PLR as that would beyond the exceptions to copyright currently permitted under EU law.

8.5 Further information relating to consultation responses and the Government response is available on the Government website at the following page:

<https://www.gov.uk/government/consultations/consultation-on-the-extension-of-the-public-lending-right-to-rights-of-holders-of-books-in-non-print-formats>

## **9. Guidance**

9.1 No guidance has been prepared

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is foreseen to be negligible

10.2 The impact on the public sector will be negligible.

10.3 An impact assessment has not been prepared for this instrument.

**11. Regulating small businesses**

11.1 This legislation does not apply to small businesses

**12. Monitoring and review**

12.1 The European Commission is currently consulting on what changes should be made to the copyright rules at EU level. This consultation includes the topic of remote loans of e-books. A consolidated version of the PLR Scheme will be produced once it is clear at EU level whether e-books can be downloaded outside library premises and when the market for e-books has matured so that, for example it is clearer how and whether e-books should be identified electronically,

12.2 In any event, after 5 years the effectiveness of the changes will be reviewed.

**13. Contact**

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