

EXPLANATORY MEMORANDUM TO
THE PUBLIC LENDING RIGHT SCHEME 1982 (COMMENCEMENT OF
VARIATIONS) (NO. 2) ORDER 2018

2018 No. 691

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument brings into force variations to the Public Lending Right Scheme. The purpose of these variations is to reflect the changes made to the Public Lending Right Act 1979 by the commencement of provisions in section 31 of the Digital Economy Act 2017 which extend the Public Lending Right to include remote lending of e-books and e-audiobooks. The variations also remove a requirement for authors registering for Public Lending Right for the first time, including those making posthumous applications, to provide a certificate signed by an independent witness.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Public Lending Right Act 1979 (“the 1979 Act”) gave the Secretary of State power to prepare and bring into force the Public Lending Right Scheme (“the Scheme”), which was subsequently established by the Public Lending Right Scheme 1982 (Commencement) Order 1982 (S.I. 1982/719). The Scheme is set out in the Appendix to that Order. It confers on authors a right to receive payments from a central fund based on the number of times their books are lent out by public libraries.
- 4.2 Section 3(7) of the 1979 Act provides the Secretary of State with a power to vary the Scheme. Any such variation must be brought into force by Order. The most recent amendment to the Scheme was made by the Public Lending Right Scheme 1982 (Commencement of Variation) Order 2018 (S.I. 2018/17).
- 4.3 This Order is required to bring into force further variations to the Scheme made by the Secretary of State.

5. Extent and Territorial Application

- 5.1 The extent and territorial application of this instrument in respect of the remote e-lending provisions set out in Part 1 of the Appendix to the Order is England and

Wales and Scotland only. The extent and territorial application of this instrument in respect of the registration provisions set out in Part 2 of the Appendix to the Order is the whole of the United Kingdom.

- 5.2 The Public Lending Right is reserved in Scotland and Wales, but is a transferred matter in Northern Ireland. Section 31 of the Digital Economy Act 2017, which amends the 1979 Act to extend the Public Lending Right to include remote e-lending of e-books and e-audiobooks, has not been commenced for Northern Ireland as a legislative consent motion cannot be obtained. However, it is the intention for section 31 to be commenced for, and the provisions of this instrument relating to remote e-lending to apply to, Northern Ireland once legislative consent is able to be secured.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The Scheme was brought into force on 14 June 1982 to provide annual payments from a central fund to authors whose books are loaned by public libraries in the UK. Since 2013 the British Library Board (“the Board”) has been responsible for administering the Scheme.
- 7.2 The Scheme originally applied to the lending of physical books from public libraries in the UK. The Digital Economy Act 2010 extended the Public Lending Right to include, in addition to the lending of physical books, the lending of audiobooks and the lending of e-books, but only where they were downloaded on library premises. These provisions came into force in July 2014.
- 7.3 However, lending of e-books and e-audiobooks by public libraries is generally carried out remotely by online download from a public library service’s system directly to a library user’s device for the loan period. Since the remote lending of e-books and e-audiobooks has not previously been included in the Scheme, authors have not been able to receive Public Lending Right payments for the lending of such works. Statistics collected by the Chartered Institute of Public Finance and Accountancy (CIPFA) estimate that there were 6.75 million loans of digital products (including e-books and e-audiobooks as a majority) by public libraries services in Great Britain in 2016/17.
- 7.4 The Conservative Party Manifesto 2015 included a commitment that the Government would address this. Provisions were included in section 31 of the Digital Economy Act 2017 to amend the 1979 Act so that the Public Lending Right includes remote lending of e-books and e-audiobooks.
- 7.5 This Order brings into force variations to the Scheme made by the Secretary of State to reflect and give appropriate effect to the changes made to the Public Lending Right Act 1979 by the commencement of the provisions in section 31 of the Digital Economy Act 2017. This will ensure that authors and other rights holders of e-audiobooks and e-books will be able to register to receive payments from the central fund in respect of the remote loans of such registered books.

- 7.6 Payments under the Scheme are made to authors annually in arrears, no later than the end of the following financial year. Accordingly, payments made around February 2020 will include payments relating remote loans of e-books and e-audiobooks made between July 2018 and June 2019. Based on statistics collected by CIPFA of the estimated number of loans of books, audiobooks and digital products (including e-books and e-audiobooks as a majority) by public libraries services in Great Britain, we estimate that remote lending of e-books and e-audiobooks represented around 3 per cent of total public library lending in 2016/17. However, as the e-lending increases so will the proportion of total lending that e-lending represents.
- 7.7 The Scheme also includes a requirement that, as part of the process for authors to first apply to register for Public Lending Right, or first apply for posthumous registration in relation to a deceased author, they must complete a certificate section with signature of an independent witness (as listed in the Scheme) who has known the applicant for at least 2 years and is not related to the applicant. The British Library indicates that each year around 1500 to 2000 authors and other eligible rights holders register for Public Lending Right for the first time and must ensure this certification is provided.
- 7.8 This requirement is considered outdated and unnecessary, and having considered good practice relating to identity verification, the Government is satisfied that the Board has robust procedures in place to authenticate the identity of Public Lending Right applicants. This Order therefore brings into force a variation to the Scheme made by the Secretary of State to remove the unnecessary requirement for authors registering for Public Lending Right for the first time, including those making posthumous applications, to provide a certificate signed by an independent witness. This will reduce the administrative burden on applicants as well as on the British Library in processing the certification provided with such applications.

Consolidation

- 7.9 No consolidation is required.

8. Consultation outcome

- 8.1 As the proposed changes were in relation to limited technical amendments to the Scheme, these were subject of a three week consultation from 4 May to 24 May 2018 which invited responses from representatives of authors, public libraries and others who may be affected including key stakeholders in the sector. The consultation document was also made available on the GOV.UK website. Eight responses were received, including from key representative bodies for authors, libraries, publishers, booksellers and from the British Library. All those that responded were strongly supportive of the proposed changes. A summary of consultation responses and the Government response is available at the following link:
<https://www.gov.uk/government/consultations/consultation-on-technical-amendments-to-the-public-lending-right-scheme>
- 8.2 Having considered the consultation responses, the Minister decided to vary the Scheme to reflect the changes made to the Public Lending Right Act 1979 by the commencement of provisions in section 31 of the Digital Economy Act 2017 (which extend the Public Lending Right to include remote lending of e-books and e-audiobooks) and vary the Scheme to remove a requirement for authors registering for

Public Lending Right for the first time, including those making posthumous applications, to provide a certificate signed by an independent witness.

9. Guidance

- 9.1 The Parliamentary Under Secretary of State for Arts, Heritage and Tourism has notified the Board that he has varied the Scheme. The Board will use its regular communications to authors and other stakeholders to ensure that they are made aware of the changes.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is based on authors being the main stakeholder to be affected. For the purpose of this statutory instrument we have considered all authors to be businesses. This change will result in no net impact on the total amount of funding available to authors, as the total funds available will remain the same. On average, over a ten year period, approximately £0.5 million of funds will be transferred from funding loans of books to funding loans of digital products each year. The average masks changes over time, with an estimated £0.2 million of funds re-distributed in 2018/19, forecasted to rise £0.8 million by 2027/28 as a result of forecasted trends of reduced book loans and increased loans of digital products. The change in identity verification requirements for authors registering for the Scheme will provide a small benefit to authors in terms of reducing the time required to register for the scheme, equivalent to £14k per year across the total number of new applicants in that year.
- 10.2 The impact on the public sector is to provide the Board with a variation for the purpose of administering the Scheme, amounting to £11k of saved admin resource per year and overall reductions in the elapsed time it takes to register. There is no financial impact on the Board.
- 10.3 An Impact Assessment has not been prepared for this instrument, as no significant impact on the private, voluntary or public sectors is foreseen.

11. Regulating small business

- 11.1 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.
- 11.2 No specific action is proposed to minimise burden on small businesses. The basis for this decision is that the net effect is very small, limited to the reduction of administrative burden for identity verification when registering.

12. Monitoring & review

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

13. Contact

- 13.1 Nigel Wakelin at the Department for Digital, Culture, Media and Sport (Telephone: 0207 211 6358 or email: nigel.wakelin@culture.gov.uk) can answer any queries regarding the instrument.