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**Consultation on Technical Amendments to the Public Lending Right Scheme**

May 2018

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1. **Summary**

The Public Lending Right (PLR) is the right for authors to receive payment for the loans of their book by public libraries in the UK. Section 31 of the Digital Economy Act 2017 contains provisions for the extension of the PLR to include the remote lending of e-books and audiobooks. The Government intends to bring these provisions into force and in doing so it will be necessary to also make some technical amendments to the relevant secondary legislation, the PLR Scheme.

The Department for Digital, Culture, Media and Sport has been engaging with the British Library, which manages the PLR Scheme, to consider this matter as well as other proposed updates to the PLR Scheme. This consultation therefore seeks views on proposed amendments to the PLR Scheme in order to:

1. give effect to the extension of the PLR to include e-books and audiobooks lent remotely by public libraries, in line with section 31 of the Digital Economy Act;
2. clarify that authors resident in the UK will continue to be eligible to register for PLR following the UK’s exit from the EU; and
3. remove an outdated and unnecessary requirement for authors registering for PLR for the first time, including first time posthumous applications, to provide a certificate signed by an independent witness.

The proposed changes will enable the PLR Office at the British Library to continue to administer the PLR Scheme fairly and effectively when the relevant provisions of the Digital Economy Act 2017 come into force and following the UK’s exit from the EU.

**2. How to respond**

Our preferred method of receiving your responses to the questions in this consultation document is via email: dcms-libraries@culture.gov.uk

However, hard copy responses can be sent, for receipt by the Department by the closing date below, to:

Libraries Team

Consultation on the Extension of Public Lending Right

Department for Digital, Culture, Media & Sport

4th Floor

100 Parliament Street

London SW1A 2BQ

The consultation will run for 3 weeks from Friday 4 May 2018 and will close at 5pm on Thursday 24 May 2018.

We will publish the government’s response to this consultation on the GOV.UK website, summarising the responses received and setting out the actions we have taken in respect of them, when we lay any resultant statutory instrument.

If you require a copy in an alternative format, please contact us.

For further information about this consultation please see Annex A.

**3. Background to the Public Lending Right**

The Public Lending Right Act 1979 (“the PLR Act 1979”) provides a right, known as the “Public Lending Right” (PLR), for authors and other eligible rights holders to receive payments from a central fund in respect of such of their books as are lent out to the public by local library authorities in the United Kingdom. The classes, descriptions and categories of books in respect of which PLR subsists, and the rates of payments to be made in respect of it, are determined in accordance with secondary legislation, the PLR Scheme.

The Copyright, Designs and Patents Act 1988 (“the 1988 Act”) provides that any eligible works lent under the PLR Scheme [Public Lending Right Scheme 1982 (Commencement) Order 1982)] are lent without infringing copyright under the 1988 Act. The PLR Scheme enables financial compensation for eligible and registered authors by making payments to them on the basis of how often their books are borrowed from public libraries.

The PLR Scheme has been managed by the British Library Board (“the Board”) since 1 October 2013. It is grant funded for this function by the Department for Digital, Culture, Media and Sport. PLR payments are made annually by the British Library to eligible authors who register their books with the British Library’s PLR Office. Authors resident in European Economic Area (EEA) states, including the UK, are eligible to apply for registration in respect of eligible works. A register of eligible authors and books is maintained by the PLR office.

The amounts paid to authors are calculated on the basis of loans data collected from a sample of public library authorities in the UK in the preceding Scheme year (1 July to 30 June) which is ‘grossed’ up through calculations by the PLR Office to provide a national estimate for the loans of each book in that year.

Each year, over 20,000 writers, and other rights holders (such as illustrators, photographers, narrators, producers, abridgers, translators and editors) who have contributed to books lent out by public libraries in the UK receive PLR payments and over £6 million is distributed. A maximum payment threshold per author of £6,600 applies and the minimum payment is £1.

For the PLR year from 1 July 2016 to 30 June 2017, over 2,000 authors and other contributors registered for PLR for the first time and the PLR Office collected data on over 40 million loans from the 28 library authorities that took part in the sample.

**4. Proposed amendments to the PLR Scheme**

**4.1 Extending the PLR to include remote e-lending**

The PLR Scheme originally applied to the lending of physical books from public libraries in the UK. The Digital Economy Act 2010 extended the PLR 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 and enabled payments to be made to rights holders in February 2016 in relation to such lending.

However, the lending of e-books and digital audio-books (e-audiobooks) by public libraries in the UK 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, without the need to visit library premises. This means that despite the provisions in the Digital Economy Act 2010, the remote lending of e-books and e-audiobooks has not been included in the PLR Scheme and authors have not been able to receive PLR payments for the lending of such works.

The number of e-books lent by public libraries is currently significantly less than the lending of physical books. Annual public library statistics collected by the Chartered Institute of Public Finance and Accountancy (CIPFA) indicate that in 2016/17 public libraries in Great Britain issued around 6.75 million e-book loans, compared with 192.57 million physical book issues. However, e-lending has increased year on year and the Government has acknowledged the importance of considering matters relating to remote e-lending and the PLR.

In December 2014, the Independent Library Report for England included a recommendation that the Government should seek to secure legislative changes to enable the Public Lending Right to include remote e-lending. The Conservative Party Manifesto 2015 subsequently included a commitment that the Government would work with public libraries “to ensure remote access to e-books, without charge and with appropriate compensation for authors that enhances the Public Lending Right scheme”.

The Government therefore secured provisions, through section 31 of the Digital Economy Act 2017, that will, when brought into force, amend the PLR Act 1979 so that the PLR includes remote e-lending. These provisions are intended to ensure that authors and other rights holders of e-audiobooks and e-books will be able to register through the PLR Scheme to receive payments from the central fund in respect of the remote loans of such registered books from public libraries in the UK.

The provisions in the Digital Economy Act 2017 will also amend the Copyright, Designs and Patents Act 1988 to maintain the right for copyright holders to authorise remote loans of e-audiobooks and e-books by public libraries and include terms for these books to ensure appropriate protections that reflect the differences between digital and physical books.

The PLR currently applies to the whole of the UK and we will seek to ultimately apply the extension of the PLR to include remote e-lending throughout the UK. However, while the subject matter of the PLR Act 1979 is reserved in respect of Scotland and Wales, it is transferred to the Northern Ireland Assembly. As there is currently no sitting Northern Ireland Assembly, the Government is exploring whether to first bring the provisions into force in relation to England, Wales and Scotland, and then in relation to Northern Ireland at a subsequent opportunity when the Northern Ireland Assembly is restored.

The PLR Scheme calculation year runs from 1 July to 30 June each year, and the Government’s aim is to commence the provisions on 1 July 2018. However, this is dependent on consideration of the results of this consultation and on meeting the necessary steps to lay the relevant statutory instruments.

Consequential updates to the PLR Scheme

As well as making an order to commence the relevant provisions in the Digital Economy Act 2017, it will be necessary to update the PLR Scheme to ensure that it reflects these provisions and gives appropriate effect to the extension of the PLR to include e-books and audiobooks lent remotely by public libraries.

When the relevant provision in the Digital Economy Act 2017 is commenced, section 5 of the PLR Act 1979 will be amended so that the definition of “lent out” in the PLR Act 1979 clearly includes remote lending of e-books and audiobooks as follows: “”lent out” means made available to a member of the public for use away from library premises for a limited time (including by being communicated by means of electronic transmission to a place other than library premises) and “loan” and “borrowed” are to be read accordingly”.

We propose to amend the PLR Scheme to reflect these changes made to the PLR Act 1979 in order to give effect to the extension of the PLR to include remote lending of e-books and e-audiobooks. Changes will include amendments to some of the relevant definitions in the PLR Scheme, for example, we will consider amending the definition of “loans” and “service points” to reflect the extended scope of the PLR Act 1979.

* **Do you agree with the proposal to amend the PLR Scheme to reflect the extension of PLR to include remote e-lending?**

**4.2 Eligibility of authors resident in the UK to register for PLR**

In the PLR Scheme, eligibility for registration is dependent on residency (at the time of application) in a European Economic Area (EEA) State. The PLR Scheme defines “EEA State” as a Member State of the European Union, Norway, Iceland and Liechtenstein. The definition therefore currently includes the United Kingdom, by virtue of being a Member State of the European Union.

If this current approach remains unchanged, it means that at such time as the United Kingdom may exit the EU and no longer be a Member State, any authors who have their principal home in the United Kingdom would not fall within the residency requirements and accordingly would not be eligible to register for PLR.

* **To ensure clarity that authors resident in the United Kingdom are and will continue to be eligible to register for PLR following the UK’s exit from the EU, we propose amending the relevant provisions of the PLR Scheme to include reference to residency in the United Kingdom as well as an EEA State. Do you agree?**

**4.3 Certification by an independent witness when applying for PLR**

The PLR Scheme includes a requirement that, as part of the process for authors to register when first applying for PLR they must complete a certificate section with signature of an independent witness (listed in the Scheme as “a Member of Parliament, Justice of the Peace, Minister of Religion, lawyer, bank officer, school teacher, police officer, doctor or other person accepted by the Board as being of similar standing”) who has known the applicant for at least 2 years, is not related to the applicant, and confirms that to the best of their knowledge the contents of the application are true. There is also a similar certification requirement for a first application for posthumous registration in relation to a deceased author, with the certificate section to be signed by such an independent witness.

Feedback to the British Library is that this requirement in the process is overly bureaucratic and could risk putting some authors off applying. It is also out of step with the British Library’s plans to introduce more secure online PLR registration procedures, and is considered outdated.

The British Library’s process for handling applications currently includes a number of other authentication checks and safeguards to verify the identity of the applicant and that the applicant is entitled to a share in the books they are registering. For example, when the British Library introduced online registration for PLR in 2003 it included new authentication checks in line with government standards as an alternative to written signatures. In addition, a first time applicant must provide two original documents containing the applicant’s name and current address to support their application, and an applicant is required to make a statutory declaration on their application to confirm that the information they have given is correct.

When registering each of their books the applicant must also submit an eligibility statement to confirm details about their eligibility in relation to the books. Further to this, PLR Office staff make checks on the eligibility of applicants to register titles, including by checking against the bibliographic records to ensure the title, the author and the ‘ISBN’ book identifier number are correct.

In relation to posthumous applications for authors who were previously registered for PLR, verification checks will have previously completed for the author when they applied for PLR. In addition, when the author dies the PLR Office require details of Will and Death Certificate or Grant of Probate in order to verify the legal representative of the deceased author's estate and to assign PLR.

Having considered Cabinet Office guidance, including the good practice guide “Identity proofing and verification of an individual” relating to identity verification for online services, we consider that the British Library has robust procedures in place to authenticate the identity of PLR applicants, without the need for an additional certificate signed by an independent witness.

* **We therefore propose to amend the PLR Scheme to remove the requirement that a new application, including first time posthumous applications, must be accompanied by a certificate signed by an independent witness who is not related to the applicant and has known the applicant for at least two years. Do you agree?**

**5. List of Questions**

Extending the PLR to include remote e-lending

* Question 1 - Do you agree with the proposal to amend the PLR Scheme to reflect the extension of PLR to include remote e-lending?

Eligibility of authors resident in the UK to register for PLR

* Question 2 - Do you agree with the proposal to amend the relevant provisions of the PLR Scheme to include reference to residency in the United Kingdom as well as an EEA State, in order to clarify that authors resident in the United Kingdom are and will continue to be eligible to register for PLR?

Requirement for certification by an independent witness when applying for PLR

* Question 3 - Do you agree with the proposal to amend the PLR Scheme to remove the requirement that a new application, including first time posthumous applications, must be accompanied by a certificate signed by an independent witness who is not related to the applicant and has known the applicant for at least two years?

**ANNEX A**

**Further information about this consultation**

For enquiries about the practicalities of responding to this consultation, rather than
responding to the content, please contact the DCMS Ministerial Support Team at the
Department for Digital, Culture, Media and Sport, 4th floor, 100 Parliament St, London
SW1A 2BQ or email using the form at www.gov.uk/contact\_us.

Information provided in response to this consultation, including personal information,
may also be published or disclosed in accordance with the access to information
regimes (these are primarily the Freedom of Information Act 2000 (“FOIA”), the Data
Protection Act 1998 (“DPA”) and the Environmental Information Regulations 2004).

The government may publish responses received. If you want the information that you
provide to be treated as confidential, please be aware that, under the FOIA, there is a
statutory Code of Practice with which public authorities must comply and which deals,
amongst other things, with obligations of confidence. In view of this, please identify, and provide explanation for, any information that you consider confidential and do not wish to be disclosed.

If we receive a request for disclosure of the information, we will take account of your
explanation, but we cannot give an assurance that confidentiality can be maintained in
all circumstances. It would need to be considered appropriate under the relevant
legislation. You should note that many email messages carry, as a matter of course, a
statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-disclosure unless accompanied by an additional specific request for
confidentiality.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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www.gov.uk/dcms