

EXPLANATORY MEMORANDUM TO
THE PUBLIC LENDING RIGHT SCHEME 1982 (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 No. [XXXX]

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 Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument amends the Public Lending Right Scheme (“the Scheme”). The Scheme 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 (known as the “Public Lending Right”). The purpose of this amendment is to maintain the status quo and ensure authors resident in the United Kingdom will continue to be eligible to register for the Public Lending Right, as well as residents of a European Economic Area (“EEA”) State, following the United Kingdom’s exit from the European Union (“EU”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 In the Scheme, eligibility to register for the Public Lending Right is dependent on an author’s residency, at the time of application, in an EEA State. “EEA State” is defined as a Member State of the EU, Norway, Iceland and Liechtenstein. Authors resident in the United Kingdom are therefore eligible to register for the Public Lending Right, because the United Kingdom is a Member State of the EU. The Scheme is domestic legislation. It falls within the definition of “EU-derived domestic legislation” under section 2(2)(d) of the European Union (Withdrawal) Act 2018 because it contains references to the EEA.

Why is it being changed?

- 2.3 After exit day, the United Kingdom will cease to be a Member State of the EU, and therefore also cease to be an EEA State. Without this amendment to the Scheme, authors resident in the United Kingdom would therefore no longer be eligible to register for the Public Lending Right after exit day, whereas authors resident in an EEA State would.

What will it now do?

- 2.4 The amendment made by this instrument will ensure that the Scheme continues to operate after the exit of the United Kingdom from the EU, as it does currently, by ensuring that authors resident in the United Kingdom can continue to be eligible to register for the Public Lending Right, alongside authors resident in other EEA States.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument is being laid for sifting by the Sifting Committees.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Public Lending Right Act 1979 (“the 1979 Act”) gave the Secretary of State power to prepare and bring into force 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. In accordance with the Scheme, a right is conferred on authors to receive payments from a central fund based on the number of times their books are lent out by public libraries (the Public Lending Right). For the purposes of the Scheme, an “eligible person” may apply to register for the Public Lending Right. An “eligible person” is defined as a person who at the time of applying has their only or principal home in an EEA State; or, if they have no home, has been present in an EEA State for not less than twelve months out of the preceding twenty-four months.

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. A recent Order brought into force on 1 July 2018 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. Those variations to the Scheme 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.

7.2 In the Scheme, eligibility to register for the Public Lending Right is dependent on an author, at the time of application, being a resident in an EEA State (with their only or principal home in an EEA State; or, if they have no home, having been present in an

EEA State for not less than twelve months out of the preceding twenty-four months). “EEA State” is defined as a Member State of the EU, Norway, Iceland and Liechtenstein. Residents of the United Kingdom are therefore eligible to register for the Public Lending Right, because the United Kingdom is a Member State of the EU.

- 7.3 After exit day the United Kingdom will cease to be a Member State of the EU, and therefore also cease to be an EEA State within the above definition. Without this amendment to the Scheme, an author resident in the United Kingdom would therefore no longer be eligible to register for the Public Lending Right after exit day, whereas an author resident in an EEA State would.
- 7.4 Over 95% of applicants to register for the Public Lending Right in 2016-17 were residents at the time of application in the United Kingdom. Overall, in relation to the Public Lending Right Scheme year 2016-17, the British Library indicates that over 22,000 persons received Public Lending Right payments and that of these over 21,000 were resident in the United Kingdom.
- 7.5 The amendment to the Scheme made by this instrument will ensure that the Scheme continues to operate after the exit of the United Kingdom from the EU, as it does currently, by ensuring that authors resident in the United Kingdom can continue to be eligible to register for the Public Lending Right, alongside authors resident in other EEA States.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies (in particular under section 8(2)(d)(ii)) arising from the withdrawal of the United Kingdom from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 No consolidation is required.

10. Consultation outcome

- 10.1 As the proposed amendment to the Scheme was part of a wider group of limited technical amendments to the Scheme considered earlier this year, this and other changes were the subject of a three week consultation from 4 May to 24 May 2018. This consultation 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 these were supportive of the proposed amendment. 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>
- 10.2 Having considered the consultation responses, the Minister decided to amend the Scheme to ensure that authors resident in the United Kingdom will continue to be

eligible to register for the Public Lending Right following the United Kingdom's exit from the EU. The Department for Digital, Culture, Media and Sport also engaged with the devolved administrations about the proposed amendment. In particular, in accordance with long established practice in this area, the Department consulted with Northern Ireland as the subject matter of the Public Lending Right is a transferred matter in respect of Northern Ireland. The Permanent Secretary of the Department for Digital, Culture, Media and Sport wrote to the Permanent Secretary at Northern Ireland's Department for Communities to officially inform him of this proposed instrument, and he responded to note this intention to legislate.

11. Guidance

- 11.1 The Parliamentary Under Secretary of State for Arts, Heritage and Tourism will notify the Board when the Scheme has been amended. The Board will use its regular communications to authors and other stakeholders to ensure that they are made aware of the amendment.

12. Impact

- 12.1 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. There is no, or no significant, impact on business, charities or voluntary bodies because the instrument does not amount to a policy change but operates to maintain the status quo.
- 12.2 There is no, or no significant, impact on the public sector because the instrument does not amount to a policy change but operates to maintain the status quo.
- 12.3 An Impact Assessment has not been prepared for this instrument because it maintains the status quo. However, a de minimis assessment was carried out and concluded that there would be no impact on businesses or the public sector.

13. Regulating small business

- 13.1 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.
- 13.2 The effect of this instrument is to maintain the status quo, so no specific action is necessary to minimise the impact on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the implementation of the amendment 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.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Simon Richardson at the Department for Digital, Culture, Media and Sport Telephone: 07540 674339 or email: simon.richardson@culture.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Kate McGavin and Helen Williams, Deputy Directors for Arts, Libraries and Digital Culture (jobshare) at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Michael Ellis, Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, Michael Ellis has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Public Lending Right Scheme 1982 (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument does not amount to a policy change but operates to maintain the status quo, as described in paragraphs 2.2 and 7.1 to 7.5 of the Explanatory Memorandum.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, Michael Ellis has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Public Lending Right Scheme 1982 (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 2.2 This is the case because the instrument does not amount to a policy change but operates to maintain the status quo, as described in paragraphs 2.2 and 7.1 to 7.5 of the Explanatory Memorandum.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, Michael Ellis has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are detailed in paragraphs 7.1 to 7.5 of the Explanatory Memorandum.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, Michael Ellis has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 The Parliamentary Under Secretary of State, Michael Ellis has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Michael Ellis have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

5. Explanations

- 5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.