

## DIGITAL ECONOMY BILL

### Supplementary memorandum concerning the delegated powers in the Bill for the Delegated Powers and Regulatory Reform Committee

#### A. INTRODUCTION

1. This further supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Culture, Media and Sport to address an amendment to the Digital Economy Bill tabled on 16 February 2017.

#### B. ANALYSIS OF DELEGATED POWERS BY CLAUSE

***New clause: Power to provide for remote loans of e-books and audio-books within the Public Lending Right Scheme (section 3(7) of the Public Lending Right Act 1979)***

*Power conferred on: Secretary of State*

*Power exercisable by: Commencement order in a statutory instrument*

*Parliamentary procedure: Negative resolution*

##### *Context and purpose*

2. This clause amends section 5 of the Public Lending Right Act 1979 (“the 1979 Act”) to extend the public lending right to include remote loans of e-books and audio-books from public libraries – that is, where those e-books or audio-books are communicated by means of electronic transmission to a place other than library premises.
3. The 1979 Act provides a right for authors, known as the “public lending right”, 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 public lending right subsists, and the scales of payments to be made in respect of it, are to be determined by or in accordance with a scheme prepared by the Secretary of State (“the PLR scheme”).

4. A draft of the PLR scheme was approved by a resolution of each House of Parliament and brought into force by the Public Lending Right Scheme 1982 (Commencement) Order 1982 (SI 1982/719), in accordance with section 3(1) and (2) of the 1979 Act. It has thereafter been varied on a number of occasions pursuant to section 3(7).
5. The scope of the public lending right was amended by the Digital Economy Act 2010 so as to include loans of audio-books and e-books, but only insofar as they were lent out on library premises. The PLR scheme was varied to reflect these amendments.
6. The clause now amends the definition of “lent out” in section 5 of the 1979 Act so as to remove the exclusion of remote loans. This responds to changes in technology and increasing demand for remote lending from public libraries, and will enable the PLR scheme to ensure that authors receive appropriate compensation for such of their books as are lent out remotely.
7. The clause also amends section 40A of the Copyright, Designs and Patents Act 1988 (which provides that copyright in a work is not infringed by the lending of a book within the PLR scheme) so as to ensure that copyright owners have the right to authorise loans by public libraries of e-books and e-audio-books (that is, audio-books in a form which can be lent remotely). This reflects the differences between digital and physical books and enables copyright owners to include technological features and/or terms and conditions in respect of e-books and e-audio-books to mirror physical lending, such as one loan at a time or a limited overall lifespan.
8. The widening of the scope of the public lending right to include remote loans of e-books and audio-books accordingly also widens the scope of the delegated power to set out in the PLR scheme the matters in which public lending right subsists, and in particular the Secretary of State’s power under section 3(7) of the 1979 Act to vary the PLR scheme (insofar as any such variation is required), to include remote loans.

9. The variation may comprise such incidental and transitional provisions as the Secretary of State thinks appropriate for the purposes of continuing the PLR scheme as varied.

*Justification*

10. The existing power to set out in the PLR scheme the matters in which public lending right subsists remains appropriate for remote loans of e-books and audio-books. Flexibility to change the PLR scheme is important to ensure that it continues to operate effectively in the light of changing technological, social and economic circumstances. For example, the PLR scheme specifies the sum attributable to each qualifying loan for the purposes of calculating the total payment owed to each author and this rate per loan requires variation from time to time depending on the size of the central fund available and the number of qualifying loans.

*Justification for procedure selected*

11. The principle of extending the public lending right to remote loans of e-books and audio-books is set out on the face of the Bill. Insofar as any variation to the PLR scheme is required to give effect to that principle, the Secretary of State must follow the procedure set out in section 3(7) of the 1979 Act.
12. Before varying the PLR scheme, the Secretary of State must consult with representatives of authors and library authorities and others who appear likely to be affected by it. The variation is then brought into force by an order in a statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament. This ensures an appropriate level of both expert input and Parliamentary oversight.
13. In addition, section 4(3) of the British Library Act 1972 requires the Secretary of State to lay an annual report prepared by the British Library Board on the working of the PLR scheme before each House of Parliament, thus ensuring that Parliament is able to properly scrutinise the operation of the scheme.

**Department for Culture, Media and Sport**  
**16 February 2017**