MEMORANDUM

LEGAL DEPOSIT LIBRARIES BILL

Purpose

1. In order to ensure that the National Library for Scotland retains the benefit of the present arrangements, it is proposed that the Legal Deposit Libraries Bill should extend to Scotland. A Sewel Motion is, therefore, required to obtain the consent of the Scottish Parliament to this Bill.

Background

2. The purpose of the Legal Deposit Libraries Bill, which received its Third Reading on 4 July (the Bill went to the Lords on 7 July), is to extend the provisions of the legal deposit to cover material published in media other than print: electronic on-line and off-line publications and other non print materials. This would cover materials such as Internet publications, e-journals, CD ROMs and microforms thereby ensuring that all publications of significance are collected, regardless of the medium in which they are published, and are preserved as part of the national published archive, so as to remain available to future generations of users.

3. Under Section 15 of the Copyright Act 1911, a copy of each book or serial or other printed publication which is published in the UK is required to be deposited, free of charge, in the British Library. Under this, five other libraries (the National Libraries of Scotland and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin) are each entitled to receive, on request, one free copy of any book or other printed publication published in the UK. These libraries, together with the British Library, are collectively known as the deposit libraries.

4. Section 15 of the Copyright Act 1911 applies only to works in printed form. Since the development of new media and the growth of publication in non-print forms, the existing legislation has ceased to be adequate to ensure the continuation of a comprehensive archive of the nation's published material.

Content of the Bill

5. The Bill has 17 clauses: Clause 1-3 set out Duty to Deposit; Clause 4 and 5 preserve the existing framework set out in Section 15 of the 1911 Copyright Act regarding print; Clauses 6-8 set out the regulation making powers of the Secretary of State, particularly in relation to non-print material. Clauses 9 and 10 deal with exemption from liability. Clauses 11-13 deal with Regulations. The final clauses deal with general issues of definition (Clause 14), consequential amendments, repeals and revocations (Clause 15), commencement and extent (Clause 16) and short title (Clause 17).

Commentary on Clauses related to Scotland

Clause 1: Deposit of publications

6. This clause imposes a duty on publishers to deposit any published material with the legal deposit library (or libraries) that is (or are) entitled to receive a copy of said material in the medium it is published. Such deposit must be at an address in the United Kingdom to be specified by the library.

7. It describes the types of printed material that must be deposited, and provides that non-print works that are prescribed by Regulations must also be deposited. It specifically addresses the issues of sound and film recordings, identifying the limited circumstances under which these will be covered: when they are incidental features of the main body of a work and not its purpose.

Clause 2: New and alternative editions

8. This clause addresses the issue of duplicate publications and provides that it is not necessary to deposit a new edition of a work if it is substantially the same as one already published in that medium. It enables the Secretary of State to determine the circumstances under which a work is to be considered 'substantially the same' as a previously published work and to determine the medium of deposit where the same work is published in different media.

Clause 3: Enforcement

9. This clause lays out those measures that can be taken if a publisher fails to deposit. The library will be able to apply to the county court (or to the sheriff court in Scotland) for an order requiring deposit, or in those instances where such an order would not be effective or appropriate, an order that the publisher make a payment equivalent to the cost of making good the failure to comply.

Clause 5: Printed publications: other libraries

10. This enables each of the other five legal deposit libraries (the National Library of Scotland, the National Library of Wales, the Bodleian Library, Oxford, the University Library, Cambridge and the Library of Trinity College, Dublin) to request a copy of each printed work. Such request must be in writing, may be made before the publication but may not be made more than 12 months after publication and can cover all future numbers or parts of an encyclopaedia, newspaper, magazine or other work. The deposit must be made within a month of publication or of receipt of the request by the publishers. The copy deposited must be of the same quality as the largest number of copies published in the United Kingdom at the time of delivery.

Clause 6: Regulations: deposit of non-print publications

11. This sets out the types of regulations that the Secretary of State can make in relation to non-print material. *Sub-section (1)* gives a general power to the Secretary of State to make regulations regarding the duty to deposit non-print material. *Sub-section (2)* sets out the type of things that the Secretary of State may include in regulations: to determine how and when a non-print publication must be deposited; the obligation to provide the information necessary to make the work accessible; the timing of deposit; the means of delivery of the work; the quality of the copy; the format of deposit (where a work is published in different formats); to determine when on-line publications are to be considered as published in the UK and to specify the medium in which the publication is to be delivered. It will not be necessary to deposit works published before the necessary regulations are made.

Clauses 9 and 10: Exemption from Liability

12. These specify exemptions from liability in relation to the deposit of publications and activities related to publications, and enable the Secretary of State to make regulations to apply in relation to liability (including criminal liability) of any description prescribed in the regulations.

Clauses 7 and 8: Use of non-print publications

13. These enable the Secretary of State to make regulations that amend other legislation, such as the Copyright, Designs and Patents Act 1988 to enable the deposit libraries to take copies of the material for the purposes of access to the material by the library and its readers, and for preservation purposes, without infringing intellectual property rights in that material. There is an arrangement whereby legal publications are in fact deposited with the Faculty of Advocates in Scotland, instead of the National Library of Scotland. Therefore, for the purposes of clause 7, the Faculty of Advocates is deemed to be a deposit library.

Clauses 11-12: Regulations

14. These enable different provisions to be made for different purposes, including for different media, for different descriptions of work, for different deposit libraries, and may make exceptions to the general provisions. Regulations will not be made without the consent of the National Assembly for Wales or the Scottish Executive, where the regulations remove or do not confer entitlements on the National Library of Wales or Scotland, respectively. There will be no obligation to obtain that consent where the National Libraries (or the Faculty of Advocates in the case of legal publications) have access to electronic works by electronic means.

15. In all other cases the National Assembly and the Scottish Ministers must be consulted if the regulations would affect the National Libraries in any way. It is also necessary to consult the deposit libraries and those publishers most likely to be affected before Regulations can be made. Any regulations that are made must be approved in draft by each House of Parliament.

Clause 15: Consequential amendments, repeals and revocations

16. This sets out the consequential amendments to the National Library of Scotland Act 1925, providing for legal publications to be deposited with the Faculty of Advocates, and together with the Schedule, those provisions which are to be repealed or revoked as they are superseded by this Act.

Clause 16: Commencement and Extent

17. The provisions of this Act, other than the powers to make regulations, will be brought into force by order made after consultation with the Scottish Ministers and the National Assembly. It extends throughout the UK.

SCOTTISH EXECUTIVE

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