



STATUTORY INSTRUMENTS

S.I. No. 597 of 2008



COPYRIGHT AND RELATED RIGHTS (PUBLIC LENDING
REMUNERATION SCHEME) REGULATIONS 2008

(Prn. A8/2079)

COPYRIGHT AND RELATED RIGHTS (PUBLIC LENDING
REMUNERATION SCHEME) REGULATIONS 2008

I, MICHAEL KITT, Minister of State at the Department of the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 42A of the Copyright and Related Rights Act 2000 (No. 28 of 2000) (as inserted by section 7 of the Copyright and Related Rights (Amendment) Act 2007 (No. 39 of 2007)); section 79 of the Local Government Act 2001 (No. 37 of 2001), as amended by section 14 of the Copyright and Related Rights (Amendment) Act 2007 and the Environment, Heritage and Local Government (Delegation of Ministerial Functions) Order 2008 (No. 226 of 2008), make the following Regulations:

Part I

TITLE AND INTERPRETATION

Article 1: Citation and extent

These Regulations may be cited as the Copyright and Related Rights (Public Lending Remuneration Scheme) Regulations 2008.

Article 2: General definitions

In these Regulations, except where the context otherwise requires—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended from time to time;

“eligible author”, in relation to an eligible book, means an author of that book who is an eligible person;

“eligible book” has the meaning assigned thereto in Article 7;

“eligible person”, in relation to an author, has the meaning assigned thereto in Article 5;

“financial year” means a period of twelve months ending on 31 December in any year;

“identifying number” means the number entered in the Register in pursuance of Article 9(2);

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 6th January, 2009.*

“library authority” has the meaning assigned thereto by section 77(1) of the Local Government Act 2001 (No. 37 of 2001);

“Member State of the EEA” means a state which is a contracting state to the EEA Agreement;

“Minister” means the Minister for the Environment, Heritage and Local Government;

“posthumously eligible book” has the meaning assigned thereto by Article 8;

“posthumously eligible person” has the meaning assigned thereto by Article 6;

“public library” has the meaning assigned thereto by section 42A(5) of the Copyright and Related Rights Act 2000 (No. 28 of 2000), as inserted by the Copyright and Related Rights (Amendment) Act 2007 (No. 39 of 2007);

“qualifying works” means the class of works so declared in Article 3(2);

“Register” means the register established under Article 9(1);

“registered interest” means the interest (being the whole or a share thereof), in the Public Lending Remuneration Scheme in respect of a particular book, shown on the Register as belonging to a particular person, and “registered owner” means the person for the time being so registered;

“Registrar” means the person designated by the Minister in accordance with Article 9(4);

“registry” means the place at which the Register is for the time being maintained in pursuance of Article 9.

Part II

BOOKS AND AUTHORS ELIGIBLE UNDER THE SCHEME

Article 3: Purpose of Regulations

(1) For the purposes of section 42A of the Copyright and Related Rights Act, 2000 (No. 28 of 2000) (as inserted by section 7 of the Copyright and Related Rights (Amendment) Act 2007 (No 39 of 2007), the Minister hereby establishes a Scheme to be known as the Public Lending Remuneration Scheme (hereinafter referred to as “the Scheme”) to remunerate authors, out of moneys voted by the Oireachtas for the purpose, for the lending by public libraries of qualifying works and references to the Scheme in these Regulations may be construed as references to these Regulations and vice versa.

(2) It is hereby declared that the class of works qualifying for the Scheme shall be eligible books and posthumously eligible books within the meaning of Articles 7 and 8 respectively.

Article 4: Authors

(1) A person shall be treated as an author of a book for the purpose of this Scheme if he or she is either—

- (a) a writer of the book;
- (b) a translator of the book;
- (c) an editor or compiler of the book, who has contributed more than ten per cent of the contents of the book or more than ten pages of the contents, whichever is the less; or
- (d) an illustrator of the book, which for this purpose includes the author of a photograph.

(2) Notwithstanding paragraph (1), a person shall not be treated as an author of a book unless the fact that the person is an author within the meaning of paragraph (1) is evidenced by—

- (a) the person being named on the title page of the book; or
- (b) the person's entitlement to a royalty payment from the publisher in respect of the book; or
- (c) in the case of a book without a title page, by the person being named elsewhere in the book and in the view of the Registrar his or her contribution to the book was such that he or she would have merited a mention on the title page had there been one, or
- (d) by a statement, signed by all the other authors of the book in respect of whom the fact that they are authors of the book is evidenced in accordance with paragraphs (a) to (c), that the person's contribution to the book was such that it is appropriate that he or she should be treated as an author of the book and the Registrar is satisfied that it is appropriate so to treat him or her.

Article 5: Eligible persons

For the purposes of these Regulations and in relation to each application by a person relating to an eligible book, the applicant is an eligible person if he or she is an author (within the meaning of Article 4) of that book, who, at the date of the application, is a citizen or subject of a Member State of the EEA or is an individual domiciled or ordinarily resident in a Member State of the EEA.

Article 6: Posthumously eligible persons

For the purposes of the Regulations and in relation to each application relating to a posthumously eligible book, an author who is dead is a posthumously eligible person if, had he or she been an applicant for first registration under the Public Lending Remuneration Scheme in relation to that book at the date of his or her death, he or she would have been an eligible person in accordance with Article 5.

Article 7: Eligible books

(1) For the purposes of this Scheme, an eligible book is a book (as defined in paragraph (2) the sole author, or at least one of the authors, of which is an eligible person; and there shall be treated as a separate book each volume of a work published in two or more volumes and each new edition of a book.

(2) In paragraph (1) “book” means a printed and bound publication (including a paperback edition) but does not include—

- (a) a book bearing, in lieu of the name of an author who is a natural person, the name of a body corporate or an unincorporated association;
- (b) a book which is wholly or mainly a musical score;
- (c) a book which has not been offered for sale to the public;
- (d) a serial publication including, without prejudice to the generality of that expression, a newspaper, magazine, journal or periodical.

Article 8: Posthumously eligible books

For the purposes of the Scheme, a book is a posthumously eligible book if—

- (a) it is a book within the meaning of article 7(2);
- (b) the sole author, or at least one of the authors of the book, is a posthumously eligible person;
- (c) the book is a previously unregistered book published during the year before the date of death of the author or up to 10 years after the date of death of the author, providing the author had registered at least one other book pursuant to these Regulations during his or her lifetime; or
- (d) the book is a new edition of a work already registered or forms part of a work already registered pursuant to these Regulations.

Part III

REGISTRATION UNDER THE PUBLIC LENDING REMUNERATION SCHEME

The Register and Registration

Article 9: The Register

(1) The Registrar shall establish and maintain a Public Lending Remuneration Scheme Register at such place as the Minister may from time to time determine, and upon each such determination notice shall be published in *Iris Oifigiúil* of such place and the date of the commencement of registration thereat.

(2) The Register shall contain such particulars of each book registered (including an identifying number) and each author thereof as the Registrar may from time to time deem necessary for the proper administration of the Scheme.

(3) Where a book has two or more authors (including any who are not eligible persons), the Register shall include details of the proportion of Public Lending Remuneration due to each author under the provisions of Article 11.

(4) The Minister hereby designates the Director of An Chomhairle Leabharlanna (The Library Council) as the Registrar.

Article 10: Registration

(1) An interest under the Scheme in respect of a book may only be registered—

(a) if the book is an eligible book and application in that behalf is made in accordance with subsection (2);

(b) the book is a posthumously eligible book and application in that behalf is made in accordance with subsection (3).

(2) An application for registration under the Scheme in respect of an eligible book or for renunciation of a registered interest shall be made by an author in such a manner and form as the Registrar may from time to time deem necessary for the proper administration of the Scheme.

(3) An application for registration under the Scheme in respect of a posthumously eligible book or a posthumously eligible person's share of an entitlement shall be made by the personal representatives of the posthumously eligible person concerned and in such a manner and form as the Registrar may from time to time deem necessary for the proper administration of the Scheme and shall include—

(a) In the case of a work by more than one author, a statement that the posthumously eligible person in relation to whom the application is being made was an author of the book and that the claim to Public Lending Remuneration in respect thereof is limited to the applicable percentage prescribed in Article 11; and

(b) Where an application is made by a personal representative who has not previously made an application in relation to that posthumously eligible person, the probate, letters of administration or confirmation of the executor or executors of the posthumously eligible person in relation to whom the application is being made.

(4) The share under the Scheme in a book with two or more authors of an author who was not an eligible person at the time when application was first made for the registration of the share under the Scheme of any co-author may only be registered if—

(a) he or she has become and remains an eligible person, and

(b) application in that behalf is made in accordance with paragraph (1).

(5) Subject to the provisions of paragraph (3), the personal representatives of a posthumously eligible person shall be named in the Register as owner in place of the deceased owner with the addition of the words “executor (or administrator) of (name), deceased”.

(6) A registered owner may transfer the share of Public Lending Remuneration due to him or her to any legal or natural person through a written instruction to the Registrar and such transfer shall remain in force until revoked by the registered owner through a written instruction to the Registrar.

(7) Notwithstanding the provisions of paragraphs (1) to (4) above, the Registrar may make administrative arrangements for the efficient operation of the Scheme, including reciprocal arrangements with equivalent registration bodies in other member states of the EEA.

Article 11: Shares in Public Lending Remuneration

(1) An eligible person’s registered share of Public Lending Remuneration in respect of a book of which he or she is sole author shall be the whole of that Remuneration or, where a book has two or more authors (including any who are not eligible persons), such share of the Public Lending Remuneration as set out in paragraphs (2) to (5) below or as specified in accordance with paragraph (8).

(2) A translator’s share of Public Lending Remuneration in respect of a book shall be thirty per cent of that Remuneration, or if there is more than one translator (including any who are not eligible persons), an equal share of thirty per cent.

(3) An editor’s or compiler’s share of Public Lending Remuneration in respect of a book shall be twenty per cent of that Remuneration, or if there is more than one editor or compiler (including any who are not eligible persons), an equal share of twenty per cent.

(4) An illustrator’s share of Public Lending Remuneration in respect of a book shall be twenty per cent of that Remuneration, or if there is more than one illustrator (including any who are not eligible persons), an equal share of twenty per cent.

(5) If a translator, editor, compiler or illustrator satisfies the Registrar that he or she has contributed more to a book than the percentage allocated in paragraphs (2), (3) and (4) above, as applicable, his or her share may be deemed by the Registrar to be a percentage equal to his or her percentage contribution.

(6) Where a book has two or more authors (including any who are not eligible persons) and the Registrar is satisfied that one or more of them is—

(a) dead and his or her interest has not been transferred; or

- (b) cannot be traced at the date of application, despite all reasonable steps having been taken to do so,

the Public Lending Remuneration shall be apportioned amongst all the authors (including any who are not eligible persons) by the application of paragraphs (1) to (5) above.

(7) Where an author has a registered interest in a book as an author in more than one capacity he or she shall be entitled to a share in respect of each capacity.

(8) Where all the authors (including the personal representatives of a posthumously eligible person) amongst whom the Public Lending Remuneration would otherwise be apportioned as laid out in this Article specify in their original application or jointly notify the Registrar in writing that they wish the Remuneration to be apportioned in a manner other than that laid out in this Article, the apportionment specified by them shall apply if the Registrar is satisfied that it is reasonable in that case and for that purpose each of those authors who is alive at the date of application shall be a party to the application, unless the Registrar is satisfied that an author cannot be contacted, despite all reasonable steps having been taken to do so.

(9) Where the number of authors of a book is such that the application of the percentages laid out in paragraphs (1) to (5) above would lead to an amount greater than the whole, and the authors have not specified an apportionment under the provisions of paragraph (8) above, the Registrar shall decide the percentage share of Public Lending Remuneration due to each person having regard to the provisions of paragraphs (1) to (5) above.

(10) The onus will be on the owner of the registered interest or his or her representatives to inform the Registrar of any relevant change of circumstances which may affect the administration or calculation of the payment.

Article 12: Dealings to be effected only on the Register

No registered interest in respect of a particular book shall subsist and no transmission of a registered interest shall be effective until such registered interest or such transmission has been entered in the Register by the Registrar.

Article 13: Register to be conclusive

The Register shall be conclusive as to whether the right to Public Lending Remuneration subsists in respect of a particular book and also as to the persons (if any) who are for the time being entitled to the Remuneration.

Article 14: Amendment of the Register

(1) The Register may be amended pursuant to an order of a court of competent jurisdiction or by the decision of the Registrar in any of the following cases—

- (a) in any case and at any time with the consent of the registered interest or interests in respect of a particular book;
- (b) where a court of competent jurisdiction or the Registrar is satisfied that an entry in the Register has been obtained by fraud;
- (c) where a decision of a court of competent jurisdiction affects any interest in an eligible book and in consequence thereof the Registrar is of the opinion that amendment of the Register is required;
- (d) where two or more persons are erroneously registered as being entitled to the same interest in Public Lending Remuneration in respect of a particular book;
- (e) where an entry erroneously relates to a book which is not an eligible book;
- (f) in any other case where by reason of any error or omission in the Register, or by reason of any entry made under a mistake, it appears to the Registrar just to amend the Register.

(2) A person who, as a result of an amendment of the Register pursuant to paragraph (1), becomes the registered owner of a registered interest shall be entitled to the payment of Public Lending Remuneration in respect of that interest from the date upon which the Register was amended.

Article 15: Recording of receipt of application

The Registrar shall record the date upon which each application for first registration is received by him or her.

Article 16: Completion of registration

(1) When the Registrar is satisfied as to the eligibility of a book for registration and as to the person or persons entitled to Public Lending Remuneration in respect of that book and, where applicable, of their respective shares therein, the registration shall be deemed complete.

(2) On completion of a registration the Registrar shall issue to any person so entered in the Register as having an interest in the Public Lending Remuneration in respect of the registered book, an acknowledgement of registration in a form to be decided by the Registrar, indicating therein the date from which the entry takes effect.

Article 17: Evidence required in connection with the applications

The Registrar may require the submission of evidence to satisfy him or her that—

- (a) a book is an eligible book;
- (b) a person applying as author for the first registration of registered interest, or the registration of a share of the Remuneration, is in fact the author of that book and is an eligible person;
- (c) any co-author who is not a party to an application for first registration of Public Lending Remuneration is dead or cannot be traced despite all reasonable steps having been taken to do so;
- (d) where a request under Article 11(8) is made for apportionment other than that laid out in paragraphs (1) to (5) of Article 11, that all authors of the book have agreed to the request, and
- (e) as to the identity of an author or any registered interest to whom money payable under the Scheme is due and such money may be withheld until such evidence is produced,

and may for the purpose of obtaining any such evidence require a statutory declaration to be made by any person.

Article 18: Authors not of full age

(1) Anything required to be done by an author under these Regulations shall, if the author is not of full age, be done by his or her parent or guardian and that parent or guardian shall be recorded in the Register as the person to whom are payable sums in respect of any registered interest of the author until such time as a transfer of the registration into the author's own name has been recorded in pursuance of subsection (2).

(2) An author whose interest is, under the terms of paragraph (1), registered in the name of his or her parent or guardian may, on attaining full age, make application to the Registrar for the transfer of the registration of the registered interest into his or her own name, and until such transfer has been recorded the Registrar shall be entitled to remit any sums due in respect of the registered interest to such parent or guardian.

Article 19: Renunciation

(1) On making application in that behalf which satisfies the requirements of Article 10(2), the registered owner of a registered interest may absolutely and unconditionally renounce that interest.

(2) Such renunciation may be effective for all time, or in respect of such financial years as shall be specified by the registered owner.

(3) Immediately upon the amendment of the Register, any sum due by way of Public Lending Remuneration which, apart from the renunciation, would

become payable to the registered owner in respect of any year falling within the period to which the renunciation applies shall cease to be so payable.

Article 20: Removal of entries from the Register

(1) The Registrar may direct the removal from the Register of any entry relating to a book in whose case no sum has become due by way of Public Lending Remuneration for a period of at least ten years.

(2) Where the Registrar has made a direction under paragraph (1), any subsequent application for the entry to be restored to the Register may be made only by the person who, at the date of the removal of the entry, was the registered owner or by his or her legal personal representatives.

Article 21: Copies of entries in the Register

The Registrar may require a payment of a fee for supplying a copy of an entry in the Register to the owner of a registered interest.

Part IV

ASCERTAINMENT OF THE NUMBER OF LOANS OF BOOKS

Article 22: Duty to record lendings

(1) A library authority shall record every occasion on which a copy of a book is lent out to the public and shall furnish to the Registrar, in such form and at such intervals as he or she may direct, details of such lendings, including the identifying number and any copy number of the copy in question.

(2) For the purpose of this Article, each volume of a work published in two or more volumes shall be treated as a separate book.

Article 23: Provision of book loan data

Each library authority shall submit to the Registrar, in such form, at such intervals and in respect of such periods as the Registrar may direct, a return of the total number of occasions on which the books comprised in all its collections were the subject of loans.

Article 24: Reimbursement of library authorities

(1) The Registrar may, at his or her discretion and subject to the provisions of this Article, make a contribution towards the costs incurred by library authorities in giving effect to this Scheme and the Registrar's decision as to the proportion, if any, to be reimbursed of the costs incurred shall be final.

(2) It shall be the duty of library authorities to keep proper accounts and records in respect of the expenditure incurred by them in giving effect to this Scheme and the Registrar may withhold payment to a library authority, in whole or in part, until such time as such authority has furnished to him or her sufficient evidence as to the amount of the expenditure so incurred.

Part V

CALCULATION AND PAYMENT OF PUBLIC LENDING REMUNERATION

Article 25: Determination of the sum due in respect of Public Lending Remuneration

(1) For any financial year the Registrar shall calculate and declare a rate-per-loan, having regard to the amount of money available for payment to authors, as set out in paragraph (2), and the aggregate number of eligible loans.

(2) The amount of money available for payment to authors shall be the product of the monies allocated for the Scheme in that year, including any monies unclaimed under the provisions of Article 27(3), minus the necessary expenditure incurred by the Registrar, including any contribution to library authorities under Article 24 in the administration of the Scheme in the same year.

(3) Subject to paragraphs (4) and (5), the sum due by way of Public Lending Remuneration to an author shall be calculated having regard to the aggregate number of loans of titles registered by that author, the percentage share and the rate-per-loan. Fractions of a loan are to be disregarded.

(4) The Registrar may from time to time set a maximum payment which shall apply in a financial year and no author shall receive a sum by way of Public Lending Remuneration for that financial year exceeding the maximum sum. All interests registered to the author, or registered by his or her personal representative, will form part of this calculation.

(5) The Registrar may from time to time set a minimum payment which shall apply in a financial year, and if the aggregate of the amounts determined according to paragraph (3) is less than the minimum payment, no sum shall be payable to the author. All interests registered to the author or registered by his or her personal representative will form part of this calculation.

(6) Should the loan data available to the Registrar for any year be incomplete, the Registrar may include in the aggregate of eligible loans for that year an estimate of the number of eligible loans which could reasonably be expected to have been derived from the missing data.

Article 26: Persons to whom the payment is due

The person entitled to the Public Lending Remuneration in respect of any eligible book or posthumously eligible book in any financial year shall be the registered owner thereof as at 31 December of that year, except where the registered owner has, pursuant to Article 8(6), nominated a person other than the registered owner to receive payment.

Article 27: Notification of entitlement and payment of sums due under the Scheme

(1) Any sum due under the Scheme will be paid to the registered owner in a manner decided by the Registrar with the agreement of the registered owner, or to a person nominated by the registered owner in accordance with the provisions of Article 8(6).

(2) The Registrar shall at the end of each financial year, or as soon as is reasonably practicable thereafter, inform each registered owner in such form as the Registrar may from time to time decide—

(a) the number of lendings for that year of each book in respect of which he or she is a registered owner to whom a sum is payable by way of Public Lending Remuneration in respect of that year; and

(b) the amount of such sum.

(3) If a payment made under paragraph (1) is not accepted within a period of six months—

(a) there shall be no further duty on the part of the Registrar to take steps to contact the registered owner and it shall be the responsibility of such owner to make application to the Registrar for payment; and

(b) if at the end of three years from the date upon which a payment in respect of Public Lending Remuneration becomes due no such application has been made by the person entitled thereto, the entitlement to such payment shall thereby lapse and the unclaimed money shall be included under the provisions of Article 25(2) in the amount of money available for payment to authors in the subsequent financial year.

Article 28: Interest

No sum determined to be due under this Scheme shall carry interest.

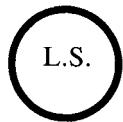
Article 29: Reporting arrangements and audit

(1) The Registrar shall cause to be kept proper accounts of all income and expenditure under the Public Lending Remuneration Scheme in each year, which shall be subject to audit by the Local Government Audit Service.

(2) Notwithstanding paragraph (1), the Minister may request the Registrar to appoint an independent auditor to produce an abstract of accounts under the Public Lending Remuneration Scheme for any year and in such case the abstract of accounts and the auditor's certificate and report thereon shall be made available in full to the Minister.

(4) The Registrar shall supply any information within his or her power in relation to the discharge of the Public Lending Remuneration Scheme as may be requested from time to time by the Minister.

(5) The Registrar shall, in the first six months of each year, make a report to the Minister on the administration of the Public Lending Remuneration Scheme during the preceding year and as soon as practicable after receiving this report, the Minister shall cause a copy of it to be laid before each House of the Oireachtas.



GIVEN under my Official Seal,
31 December 2008

MICHAEL KITT,
Minister of State at the Department of the Environment,
Heritage and Local Government.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations provide for a Public Lending Remuneration Scheme in respect of the public library service.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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