

Copyright in works commissioned by the Crown

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Background

- 1 First copyright in an original copyright protected work would generally rest with the person who creates the work in accordance with section 11 of the [Copyright, Designs and Patents Act 1988](#). That person could be an author, an artist, designer, film director or a computer programmer.

An exception to this general rule would be those works which an author creates as part of his work as an employee. In such cases, the copyright in the work produced would rest with the author's employer (section 11(2) of the Copyright, Designs and Patents Act 1988 refers).

Similarly, copyright works produced by officers or servants of the Crown in the course of their duties qualify for Crown copyright protection in accordance with section 163 of the Copyright, Designs and Patents Act 1988. For ease of reference, we shall refer to the creator of a copyright work or his employer in this guidance as the Author.

- 2 Government departments and agencies commission a wide range of works by non-Crown individuals and organisations. Unless specific provision is made in the commissioning contract for the copyright in such commissioned works to be assigned or transferred to the Crown, the copyright will continue to rest with the Author.
- 3 The purpose of this guidance is to explain the issues which departments should take into account when commissioning a copyright work and how they can arrange for the copyright in such works to be assigned to the Crown.

The decision as to whether to seek an assignment of copyright in favour of the Crown is a matter for careful consideration by the Commissioning department taking advice from HMSO. Departments should consider the audience they are aiming to reach. It is conceivable that occasions may arise where information would have less impact if it was seen as originating from an official source. For example, a campaign relating to health or drugs aimed at a teenage audience could have less impact if it was seen as having been issued by Government.

Nevertheless, departments are advised to ensure that they obtain a licence so that the Crown can use and adapt the material as necessary (see paragraph 7) without requiring the copyright holder's formal consent on each occasion.

What are the implications for not seeking an assignment of copyright?

- 4 Any copyright holder is able to exercise his rights and control the ways in which the copyright in a work may be reproduced. This would include the right to publish, disseminate and copy the work. The copyright owner would also be entitled to charge others for the right to reproduce the work.
- 5 As stated at paragraph 2, the act of commissioning a work does not of itself automatically confer copyright ownership. Indeed, it does not even give the commissioning department or agency an automatic right to reproduce or publish the work itself, unless such use is specifically agreed under the terms of the commissioning contract.

- 6 By obtaining an assignment of copyright in favour of the Crown, the department in question and the Crown generally, would enjoy all rights of access to the work in question and would be free to undertake all acts restricted by copyright. This would include the right to authorise others, via HMSO, to reproduce the work in question. Departments should, note however, that in seeking an assignment of copyright the Author has not assigned his Moral Rights. For an explanation of Moral Rights see paragraph 13.
- 7 If a department opts to leave the copyright with the Author or his employer, the department should ensure that the department and other parts of the Crown have the necessary authorisation in the form of a perpetual, irrevocable licence to use the work. This will avoid the need for the department to apply to the copyright holder each time it wished to use or copy the work. It will also mean that the department would not need to pay for any subsequent use. It should be noted that the copying of a work by a department without the consent of the copyright holder may constitute an infringement of copyright, even if the department had paid for the work to be produced in the first place. HMSO would be pleased to assist departments in this process.

What is the best means of assigning copyright in a commissioned work?

- 8 This can be best achieved within the context of the commissioning contract. A sample commissioning contract is provided at the Annex to this guidance.
- 9 In commissioning the production of a copyright work, departments should also obtain an undertaking from the Author that the work is original and that there are no third party copyright/ownership rights which need to be taken into account.

Will the copyright in works assigned to a department/Crown be Crown copyright?

- 10 Strictly speaking, no. Crown copyright is a specifically defined term under UK law and there are differences between those works which qualify for copyright protection and those which

have been assigned to the Crown. A key difference is that a Crown copyright work would enjoy a different term of copyright protection to those works where the copyright has been assigned to the Crown.

Typically a published Crown copyright literary work will enjoy a period of protection of 50 years from the end of the year in which the work was published. An assigned work, however, will enjoy a period of protection of 70 years from the end of the year in which the Author dies, in line with the standard provisions for the term of protection for copyright works. The act of assigning copyright would not change the term of protection.

How should assigned copyright works be acknowledged?

- 11 For the reason described in the previous paragraph, it is advisable to distinguish between Crown copyright and assigned works. Assignment works should bear the following copyright line:

© Queen's Printer and Controller of HMSO

Email any enquiries relating to the copyright in the work to:

copyright@nationalarchives.gov.uk.

For works commissioned by departments and agencies based in Scotland use the following copyright line:

© Queen's Printer for Scotland

All enquiries relating to the copyright in the work should be addressed to Office of the Queen's Printer for Scotland Licensing Division, Admail ADM4058, Edinburgh, EH1 1NG

- 12 The copyright shall be in the name of the Queen's Printer and Controller [or Queen's Printer for Scotland, for works commissioned by departments which operate as part of the devolved Scottish Administration], given the role of that officer in the administration of all copyrights owned by the Crown.

Moral Rights

13 Most copyright works attract Moral Rights under Chapter IV of the Copyright, Designs and Patents Act 1988. Essentially, there are four Moral Rights. These are:

- the right to be identified as author or director
- the right to object to derogatory treatment of a work
- the right not to have a work falsely attributed to an author
- the right to privacy of photographs and films

These rights cannot be assigned; an author may only waive such rights. Unless a department had strong reasons to seek a waiver of any of the Moral Rights it is recommended that departments should not seek a waiver.

Annex: Sample commissioning contract

This Agreement is dated.....

Between:

[Insert Title of Minister/Official as appropriate] acting through [insert name of Department] ('the Department'); of

and:

[Insert name] ('the Author'); of [insert address]

1. Definitions

In this Agreement, the terms below have the following meanings:

Material: An original article on the subject of to be written by the Author under the terms of this Agreement in accordance with the specification at Annex A to this Agreement.

Work: A work on the subject of which is to be published by or on behalf of the Department.

2. Supply of the Material

The Department hereby commissions the Author to produce the Material in accordance with the specification at Annex A for delivery to the Department no later than[date] unless otherwise agreed by the Department

3. Approval and publication arrangements

3.1 The Department shall notify the Author in writing within days of receiving the Material whether it is suitable for publication within the Work. If the Department consider the Material to be unsuitable, the Department shall notify the Author of the reason why the Material is considered unsuitable.

3.2 The Department reserves the right to amend, correct and edit the Material in order to prepare it for publication in the Work. The Department shall seek the approval of the Author before making any substantial changes to the Material.

4. Warranty

The Author warrants to the Department that the Material is original and that it is not a violation or infringement of any existing copyright or licence of any other right of any other person or organisation

5. Third party rights

The Author undertakes to obtain appropriate permission for any copyright material forming part of the Material where the copyright rests with a person or organisation other than the Author. The Author shall provide the Department with all appropriate details, including proof that the Author has obtained the consent of the copyright holder and details of the acknowledgements required by owners of rights other than the Author.

6. Copyright

6.1 On receiving notification from the Department in accordance with clause 3 [Approval and Publication Arrangements] that the Material is considered acceptable the Author agrees to assign all copyrights and rights in the nature of copyright in the Material to which he/she is legally entitled to the Department on behalf of the Crown.

6.2 On receiving notification from the Department in accordance with clause 3 [Approval and Publication Arrangements] that the Material is considered unacceptable, the Author shall retain all copyrights and rights in the nature of copyright to which he/she is legally entitled in the Material.

7. Payment

7.1 The Department shall pay the Author the sum of £..... in respect of:

- (a) producing the Material subject to it meeting the specification at Annex A; and
- (b) for assigning all copyrights and rights in the nature of copyright in the Material to the Department on behalf of the Crown, subject to the Department confirming that the Material

is acceptable for publication within the Work in accordance with clause 3 [Approval and Publication Arrangements].

7.2 The payment specified at sub-clause 7.1 shall be made within days of the Department receiving the assignment of copyright in accordance with sub-clause 6.1 [Copyright].

7.3 All sums payable are exclusive of UK Value Added Tax which shall, where applicable, be paid in addition to the Author at the rate in force at the time of payment, provided that the Author has supplied The Department with a current and valid UK VAT registration number.

8. Acknowledgements and moral rights

8.1 The Author hereby asserts his/her moral right to be identified as the author of the Material.

8.2 The Department shall ensure that the Author is appropriately acknowledged in the Work, subject to the Material being accepted for publication in accordance with clause 3 [Approval and Publication Arrangements].

9. Complimentary copies

The Department shall supply the Author with * free copies of the Work containing the Material subject to the Material being approved in accordance with clause 3 [Approval and Publication Arrangements].

10. Notices

Any notices, correspondence, materials or other communication in connection with the Agreement shall be sent to the following addresses:

For the Department

Name

Address

Fax

For the Author

Name

Address

Fax

11. Interpretation.

This Agreement shall be governed by and interpreted in all respects in accordance with the laws of England and Wales and shall be subject to the jurisdiction of the Courts of England and Wales. (Where the commissioning Department is based in Scotland, the Agreement should be subject to the laws of Scotland).

Signed by: Date:

Name in block capitals:

for [the Department]

Signed by: Date:

Name in block capitals:

for [the Author]

SAMPLE

Title (provisional) *

Subject Matter *

Text

Length: Between * and * words.

Medium for Delivery: e.g. 3.5" IBM PC-compatible floppy disk accompanied by one hard copy typescript pages.

Illustrative Material

Type: e.g. Black and white photographs, line drawings, graphs

etc.

Schedule

COPYRIGHT ASSIGNMENT

I[name of the Author] hereby assign all copyrights and rights in the nature of copyrights to which I am legally entitled in the Material [give full description/title] defined in the Agreement dated between myself and the Department of[full name], to the Department of[in full] on behalf of the Crown.

Signed by:

Date:.....

Name in block capitals:.....

Witnessed by:

Date:.....

Name in block capitals:.....