



**Senate**

<b>Paper Title</b>	Proposal to implement the UK Scholarly Communications licence at QMUL
<b>Outcome requested</b>	Senate is asked to <b>approve</b> this policy.
<b>Points for Senate members to note and further information</b>	<ul style="list-style-type: none"> <li>• The proposed UK Scholarly Communications Licence (UK-SCL) policy provides a single means whereby authors can comply with RCUK, HEFCE and other “green” Open Access policies.</li> <li>• The UK SCL policy will go live at a number of UK universities in autumn 2017.</li> <li>• Under the UK-SCL, academics grant the university a non-exclusive licence to all rights under copyright, except commercial reuse, for all manuscripts of scholarly articles and conference papers.</li> <li>• The author retains copyright in the work and the policy does not apply to monographs, book chapters or other similar outputs.</li> </ul>
<b>Questions for Senate to consider</b>	N/A
<b>Regulatory/statutory reference points</b>	HEFCE policy on Open Access for the post-2014 Research Excellence Framework RCUK Open Access Policy
<b>Strategy and risk</b>	This policy is intended to address the strategic risk of ‘maintaining effective and constructive governance’ in relation to Open Access. It also supports Strategic Aim 5 of the QMUL Research Strategy; that our commitment to fairness, openness and ethical behaviour in research will be reflected in policy and practice.
<b>Reporting/consideration route for the paper</b>	The policy was subject to prior consideration by the Vice-Principal Research Advisory Group and consultation with staff across QMUL.
<b>Authors</b>	Prof Bill Spence, Vice-Principal (Research) Dr Emma Hare, Executive Officer (Research) Mrs Sarah Molloy, Research Support Manager, Library Services
<b>Sponsor</b>	Prof Bill Spence, Vice-Principal (Research)

## Proposal to implement the UK Scholarly Communications licence at QMUL

### 1. Summary

A significant number of UK universities<sup>1</sup> are in the process of adopting a new policy to deal with open access, based on a model developed by Harvard and now adopted widely in the USA. The proposed UK policy is called the UK Scholarly Communications Licence (UK-SCL). Under this policy, academics grant the university a non-exclusive licence to all rights under copyright, except commercial reuse, for all manuscripts of their articles. Note that the author retains copyright in the work. The policy covers scholarly articles and conference papers.

The proposed policy in Section 2 below provides a single means whereby authors can comply with RCUK, HEFCE and other “green” policies whilst ensuring that academics can continue to publish in their journal of choice irrespective of whether the journal allows open access or not.

This licence predates and overrides publisher contracts and allows universities to sub-license to the author. The university can make manuscripts available online for re-use immediately on publication of the article. Where publishers or academics object to the licence they can request a waiver. At Harvard, MIT and similar universities the waiver rate is below 5%. No publisher has refused to accept a paper from any of the institutions that have adopted this policy nor have they legally challenged licence or deposit.

Following consultation across QMUL, a response been produced to address queries that were raised by staff, and this is included in Appendix A. For information, the documentation circulated with the consultation is also included, in Appendix B.

**Senate are requested to approve the implementation of this policy at QMUL, which will go live at a number of UK universities in autumn 2017.**

### 2. UK-SCL Policy

This licence is intended to support authors in reuse and early communication of their research, especially research which has been facilitated through the use of public funds. Institutional adoption of the licence – e.g. through the model policy, would, inter alia, enable author compliance with the UK's HEFCE-REF policy - <http://www.hefce.ac.uk/pubs/year/2014/201407/> - and with other green funder policies through a single action, and it would allow authors to reuse their own content, for example in teaching and future scholarship. The licence has been drawn up with the aim of being reasonable to authors, funders and publishers, whilst preserving the academic freedom to publish in the journal of their choice. The licence is not intended to undermine the publishing process and all the benefits that that brings, including, as is in widespread use currently, peer-review, esteem, promotion and career progression. The licence is seen as an interim solution

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<sup>1</sup> At a recent count, 65 UK universities, including 21 members of the Russell Group, are involved in discussions on the UK-SCL. At least a dozen expect to have the policy formally approved early in 2017.

to help authors make their outputs available as open access and meet funder requirements until sustainable open access publishing models emerge.

In particular, the licence supports researchers by:

- Enabling the timely communication of the findings of publicly-funded research (thereby increasing citations and impact);
- Supporting academics in meeting funder requirements for open access whilst preserving the right to publish in the journal of choice;
- Allowing the reuse of research outputs, for example for research and teaching;
- Allowing the accepted manuscript to be made available in digital repositories;
- Enabling compliance with multiple policies through a single action.

### Licence and Policy<sup>2</sup>

QMUL is committed to disseminating its research and scholarship as widely as possible. It supports the principle that the results of research should be freely accessible to the public. To enable staff<sup>3</sup> to publish their work in a journal of their choice and still meet funder requirements for open access, QMUL adopts the following policy:

Each staff member grants to QMUL a non-exclusive, irrevocable, sub-licensable, worldwide licence to make manuscripts of his or her scholarly articles publicly available. This licence is granted on condition that, if QMUL does make the said scholarly articles available, it will only do so on the terms of a Creative Commons Attribution Non-Commercial v4 (CC BY NC) licence.

The licence applies to all scholarly articles, conference proceedings and similar outputs authored or co-authored while the person is a staff member of QMUL including any third party content (all for the purposes of this policy "articles") except for any articles submitted before the adoption of this policy and any articles for which the staff member entered into an incompatible licensing or assignment agreement before the adoption of this policy. It does not apply to monographs, book chapters or other similar outputs. Upon express and timely<sup>4</sup> direction by a staff member, the President and Principal or designated staff member with delegated authority will give every consideration<sup>5</sup> to a waiver of the terms of the license and

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<sup>2</sup> Based on Stuart M. Shieber's *A model open-access policy*, available at [https://osc.hul.harvard.edu/assets/files/model-policy-annotated\\_12\\_2015.pdf](https://osc.hul.harvard.edu/assets/files/model-policy-annotated_12_2015.pdf). See also the guide to Good practices for university open-access policies; see <http://bit.ly/goodoa>

<sup>3</sup> **staff**: The wording here applies to all individuals employed by the university, whether research active or not, who publish scholarly outputs, including any students who are considered as "employees" by an institution, and any other persons who have agreed that this policy applies to them by virtue of the terms on which they are engaged by the university or are given access to the facilities and resources of the university.

<sup>4</sup> **timely**: Once the output is made public in the repository the Creative Commons licence cannot be changed retrospectively. Staff should request a waiver at acceptance.

<sup>5</sup> **every consideration**: The waiver addresses concerns authors may have regarding the policy. These include concerns about academic freedom, freedom to accommodate publisher policies, external co-authors with objections to immediate open access, and the like. The university will generally grant waivers but reserves the right to define criteria for conditions under which waiver requests will not be granted (for example when a waiver would put the university under risk of non-compliance with a funder policy).

allow a delay in the public release of the manuscript for a period of up to two years from the date of first publication (embargo).

Where this policy applies to an article that is co-authored, the QMUL author will use all reasonable endeavours to obtain a licence to QMUL from all the co-authors on the same terms as the licence granted under this policy by the staff member. QMUL automatically sub-licenses the rights granted to it under this policy to all co-authors and their host institutions, on condition that if the said co-authors and/or host institutions make a co-authored scholarly article publicly available, they will do so on the terms of a CC BY NC licence. Consequently, the staff member need not seek permission from co-authors employed by institutions that have adopted this policy or other policies that give institutions and/or authors the same rights.

Each staff member will provide an electronic copy of the accepted manuscript<sup>6</sup> (AM) of each article no later than 90 days after acceptance for publication at no charge to the appropriate representative of the President and Principal in an appropriate format (such as PDF) as specified. QMUL will deposit the AM in a digital repository, with article metadata usually available immediately upon deposit and the AM being made accessible to the public on the date of first publication (online or otherwise) under a Creative Commons Attribution Non-Commercial v4 (CC BY NC) licence. Deposit of other types of scholarly outputs is encouraged but neither required nor included in the licence grant.

Staff members will, when providing the electronic copy of the AM, notify the President and Principal or designated staff member with delegated authority if any rights or permissions needed to make third party or co-authored content in an article publicly available under a CC BY NC licence have not been secured.

The QMUL VP Research will be responsible for interpreting this policy, resolving disputes concerning application, and recommending changes. The policy will be reviewed regularly and any changes will be subject to approval by QMUL Senate. The President and Principal or their delegated staff representative shall use all reasonable endeavours to inform publishers and relevant agents of the existence and contents of this policy.

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<sup>6</sup> **accepted manuscript:** The peer-reviewed version of an article that has been accepted for publication in a journal or conference proceeding. The accepted manuscript is not the same as the typeset or published paper. HEFCE require deposit of the accepted manuscript to make an output eligible for the REF. NISO definition:

<http://www.niso.org/publications/rp/RP-8-2008.pdf>

HEFCE: <http://www.hefce.ac.uk/rsrch/oa/fag/#deposit4>

## Appendix A: Response to internal consultation on the UK Scholarly Communications Licence

A five-week consultation was launched in March 2017 regarding QMUL adoption of the UK Scholarly Communications Licence (UK SCL). Collective and individual responses were received from across all three Faculties. Many were very positive regarding the licence and its proposed adoption at QMUL. A number of queries were also raised, and clarification on a number of areas related to these is provided below.

### **1. Respondents expressed concern regarding the liability of academic authors should they enter into an agreement with the publisher that breaches the SCL.**

We would like to reiterate that the risk of litigation from publishers is minimal. Recent meetings between the UK SCL Steering Group and publisher representatives have confirmed that there is no interest from publishers in taking institutions or authors to court, they will simply request article waivers where appropriate. Furthermore, under the current system, many academics already risk individual litigation by distributing outputs in breach of publisher copyright (e.g. uploading full published copies of articles to networking sites and subject repositories), but in practice publishers have not sought to pursue legal action against authors. By introducing the UK SCL, QMUL will assume liability for any action taken against employees and we have been advised that the QMUL Professional Indemnity Policy (limit £10m) would cover this type of claim.

### **2. Will the Creative Commons license be issued as an international version and has consideration been given to issuing a 'no derivatives' (ND) license?**

Version 4 of CC licenses are designed to be used globally, without porting to local jurisdictions: <https://creativecommons.org/share-your-work/licensing-considerations/version4/>. ND licenses are not compliant with the RCUK OA policy and therefore are not considered appropriate for the SCL.

### **3. Will the SCL increase burden on authors through requiring them to seek the rights from co-authors and how will co-author approval be monitored internally?**

It is intended to provide standard text that authors can point their co-authors to, and for consortium agreements etc. to reduce the burden on authors. Guidance and training will be provided to staff to ensure they understand requirements regarding co-author and third party permissions and appropriate courses of action (e.g. seeking waivers) if permissions are withheld. It is not intended that institutions will monitor or centrally collect records of co-author agreements; standard authorisation text will be phrased so as to assume permissions unless specific objections are raised.

### **4. Is a model implemented by high profile institutions in the US, where copyright law differs significantly, appropriate for UK institutions?**

The UK SCL is based on a model first developed and implemented by Harvard University in 2008. Derivations of the model have since been adopted by over 60 institutions worldwide, including universities in Kenya, Saudi Arabia and Iceland. A list of institutions that Harvard consider are utilising their approach can be found at the following site:

[https://cyber.harvard.edu/hoap/Additional\\_resources](https://cyber.harvard.edu/hoap/Additional_resources)

In developing the UK SCL, extensive legal advice has been sought by UK universities, working with Research Libraries UK - advice came from Jisc, copyright consultants, academic experts, an international law firm and lawyers specialising in IP and commercial law. All agree that the non-exclusive licence grant to the university will stand under UK law, provided the publisher had knowledge, actual or constructive, of the earlier licence grant to the university.

**5. What impact would irrevocable granting of license rights to QMUL have on authors moving institutions?**

Under the UK SCL, academics grant the university a non-exclusive licence to all rights under copyright, except commercial reuse, for all manuscripts of their articles. The author retains copyright in the work and, because the licence is non-exclusive, is free to grant the same or additional permissions to other institutions without requiring permission from QMUL.

The rights granted to the institution are fairly limited, only allowing the institution to make a copy of the accepted manuscript available under a CC BY-NC license, and to sub-license this in order to provide these same rights to co-authors in other institutions.

**6. Some concern was expressed over the release of conference proceedings under the SCL.**

The policy only applies to published conference proceedings and therefore would not result in the release of materials that were not otherwise already publically available (unless authors specifically requested the release of non-published manuscripts).

**7. Would royalties via the Authors' Licensing and Collecting Society (ALCS) be stopped?**

The ALCS scheme pays royalties to authors where additional licensing rights, which cover use and distribution over and above the original licensing agreements, have been sought and paid for via publishers. These payments would still occur where additional rights were purchased via publishers, but additional licensing requests may potentially be reduced if the AAM version was already available under a less restrictive CC-BY-NC license. However, it should be noted that this policy *does not* include monographs (books), book chapters, and other similar published outputs, or digital research objects (artworks, performances, recordings, for example), where the majority of royalties are likely to be generated from.

**8. Would the UK SCL be compliant with funder policies (e.g. RCUK) where there is a preference for gold OA routes?**

Whilst gold OA routes are preferred by funders such as RCUK they are not a mandated requirement for several reasons: 1) Not all publishers offer a paid OA option, 2) some publishers do not offer a paid option that meets the RCUK/other funder requirements, 3) institutions may not always have funding available to pay for gold OA (for example, in 2017-18, QMUL is likely to exhaust all available funds in the institutional RCUK block grant; researchers will still be required to comply with RCUK OA policy and will therefore need to revert to the green route to do so). The UK SCL therefore helps researchers to comply with funder OA policies where gold routes are not available

## Appendix B: Information circulated with the consultation

In 2008, Harvard's Faculty of Arts & Sciences voted unanimously to adopt a policy that addressed a number of issues around publishing and open access. Since then 80 similar policies have been adopted by institutions globally, including all Harvard faculties and major US universities including MIT, California, Princeton, Caltech, Duke, Boston and Illinois at Urbana Champaign, as well as smaller colleges and international universities.

Under the Harvard policy, academics grant the university a non-exclusive licence to all rights under copyright, except commercial reuse, for all manuscripts of their articles. This licence predates and overrides publisher contracts and allows universities to sub-license to the author. The university can make manuscripts available online for re-use immediately on publication of the article.

Where publishers or academics object to the licence they can request a waiver. At Harvard, MIT and similar universities the waiver rate is below 5%. No publisher has refused to accept a paper from any of the institutions that have adopted this policy nor have they legally challenged licence or deposit. It should be noted that in institutions like Harvard faculty voted in favour of the policy, despite a complete lack of an embargo; academic support was strong across disciplines, and remains so.

### The policy

The proposed policy has been used as the basis for the policies being adopted across the UK. The policy covers scholarly articles (journal articles, and other content published in journals), and conference papers; it *does not* include monographs (books), book chapters, and other similar published outputs, or digital research objects (artworks, performances, recordings, for example). The licence may change and become more specific in its requirements over time (shorter embargoes, implementation of the CC BY licence rather than CC BY NC, for example); any such changes would require Senate approval.

### Current problems

On acceptance for publication, academics currently sign away most of their rights to publishers. This has several negative effects:

- It restricts the reuse of an academics' own scholarly outputs for teaching and research.
- It puts QMUL and academics at risk of litigation should authors use their own outputs in ways not allowed by the publisher.
- It may mean that QMUL retains no rights to some of the scholarly outputs of its academics.
- It makes compliance with funder open access mandates (in particular from HEFCE and RCUK) more difficult or more expensive (where the academics is forced to take the "gold" open access option) – and in some cases impossible.
- Management of embargos adds to the workload of QMUL's Open Access staff
- It prevents or delays open access, limiting the availability and impact of QMUL research.

## The UK-SCL

Under the UK-SCL each member of staff grants the university a non-exclusive, irrevocable, worldwide licence to make manuscripts of his or her scholarly articles publicly available under the terms of a Creative Commons Attribution Non-Commercial (CC BY NC) licence. Under this licence, non-commercial reuse is permitted, as long as the author is credited. The university can sub-license these rights to all authors of the paper and their host institutions.

The university will make metadata available publicly upon deposit and the manuscript within 12 months of acceptance or immediately upon publication, whichever is earlier [simplification to “upon publication” has been suggested]. On request the university will usually (but does not have to) grant a waiver to these rights for a period chosen by the author. A set of Frequently Asked Questions is given at the end of this Appendix.

## Benefits

Adoption of the UK-SCL has the benefits that

- This provides a single means by which authors can comply with RCUK, HEFCE and other “green” policies.
- It ensures that academics can continue to publish in their journal of choice irrespective of whether the journal allows open access or not.
- It significantly reduces the reliance on exceptions to ensure outputs remain eligible for the REF.
- This means that authors do not need to negotiate with publishers directly.
- It leads to reduced costs for compliance and REF eligibility (minimising the effort for embargo handling and checking of publisher policies).
- QMUL retains rights on a significant part of scholarly output.
- A larger share of QMUL outputs would be available freely, and sooner than currently, thereby increasing the impact of our research.
- QMUL may receive further credit in the “research environment” component of the post-2014 REF for going beyond the minimum policy requirements.
- Academics do no longer have to sign a separate deposit licence for every article manuscript uploaded to Queen Mary Research Online.
- There is a minimisation of reliance and expense on hybrid gold open access publishing<sup>7</sup>:
  - o Reducing “double dipping” (paying twice through subscriptions and APC)
  - o Minimising effort on managing hybrid APC payments (these are the most complex)
  - o Minimising complex publisher offsetting negotiations
- It maximises the funding available to support pure gold open access journals

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<sup>7</sup> Hybrid publishing is not contributing to the “transition to OA” envisaged by the UK Finch group – it is proving expensive as well as a significant additional effort as a consequence of ineffective publisher processes.



## Risks

Adoption of the UK-SCL has the following risks:

- Publishers could take legal action against authors, although this is unlikely to succeed (see below) and would create a significant publicity risk for them.
- Publishers could challenge the policy under competition law, but the legal advice is that this is unlikely to succeed as university repositories do not compete with publishers commercially.
- Academic objections to implementation; this should be addressed by full consultation. So far academic feedback at other UK universities has been very positive and at US institutions faculty have actively agreed to the policy.
- Publishers refuse to publish under the licence terms: Globally, not a single paper is known to have been rejected due to such a licence. Where publishers object, they request a waiver.
- Waiver requests increase significantly.

With regards to the risk of increased waiver requests:

- At US institutions, waiver requests are usually below 5%, and that proportion has not increased notably. Harvard has had success negotiating with publishers who request waivers, and is about to reach an agreement with several publishers not to request waivers, sometimes in exchange for a short embargo. Some publishers have even expressed a willingness to deposit manuscripts into the Harvard repository, under terms of the licence.
- JISC have agreed to negotiate with publishers as part of normal licensing agreements; the aim is to reach a blanket non-waiver agreement.
- It is proposed in the UK policy to only issue waivers for a certain period; even if waiver requests increase significantly this would ensure the university retains rights eventually.

## The legal context

US and UK copyright law differ. Under English and Scots law, if an academic signs an exclusive licence with a publisher after granting a non-exclusive licence in favour of the university, this could make the non-exclusive licence given to the university void. Extensive legal advice has been sought by UK universities, working with Research Libraries UK - advice came from Jisc, copyright consultants, academic experts, an international law firm and lawyers specialising in IP and commercial law. All agree that the non-exclusive licence grant to the university will stand under UK law, provided the publisher had knowledge, actual or constructive, of the earlier licence grant to the university. To achieve this, those UK universities adopting the model would notify publishers and publisher bodies, both directly but also via JISC (who negotiate licence deals for UK universities with publishers), sector bodies and the media. This notification will ensure that the non-exclusive licence will stand irrespective of what an academic signs with the publisher.

Technically, if an academic signs an exclusive licence with a publisher they could be in breach of the author's obligations to the publisher on account of "derogation from grant and breach of warranty". However, the legal view is that – with a publisher knowingly accepting a paper, not asking for a waiver and then suing an author – a court would not enforce a breach of

contract or warranty claim against the author. In addition, testing the licence in court creates a legal risk for the publisher (if the court rejects the publisher claim case law would be created), on top of a serious reputational risk. It is therefore assumed that the legal risk, whilst not zero, is effectively negligible.

### Sector consultation

Consultation with UK universities, in and beyond the Russell Group, sector bodies and funders has taken place in framing the policy. Briefing documents have been prepared in consultation with the Russell Group policy office for various RG meetings (VPs (Research), Research Directors and VCs) and the UK-SCL has also been discussed at RLUK board meetings, with RLUK providing funding for the most recent rounds of legal advice on behalf of the whole sector. Apart from universities there has been active interest from organisations like: HEFCE, JISC, LERU, LIBER, RLUK, SCONUL and the Wellcome Trust, and also the Dutch EU presidency. Several of these organisations are expected to endorse the UK-SCL and a number of LERU institutions are now actively considering implementation; RLUK have already confirmed and HEFCE have expressed “considerable appreciation...for taking forward this important work”.

Workshops on policy development and implementation have been held with UK universities and additional comments were sought via (closed) online surveys. A closed mailing list has been set up, with 170 subscribers from some 70 institutions. The group considering implementing the UK-SCL as a group of early adopters includes more than half of the Russell Group and around 20 other UK universities. A few major universities have been supportive of the initiative but recognise that their IP policies would require change, and their internal mechanisms for implementation mean that if they were to choose to adopt, it would be some time before they would be able to do so. QMUL’s IP policy is available here: <http://www.arcs.qmul.ac.uk/docs/policyzone/149937.pdf>. We have advice that this does not conflict with the proposed UK-SCL. For reference, paragraph 3.1 of the QMUL IP Policy states that

*“Academic Works” are those writings, research outputs other than Inventions, and other productions (for example video or audio recordings) that are aimed at communicating the progress or results of research or scholarship. The IP rights to the Academic Works created by individuals whilst QMUL employees, and the rights to any revenues derived from these, remain with their authors, however QMUL has a licence to use those works and a right to sub-licence their use, in order to advance its higher educational mission (“Academic Purposes”). This is a condition of QMUL waiving its rights of ownership of the relevant IP.’*

Prof Bill Spence, Vice-Principal (Research), 2017<sup>8</sup>

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<sup>8</sup> This document has relied on extensive material kindly provided by Chris Banks, Director of Library Services, Imperial College; thanks also to Sarah Molloy, Research Support Manager, Library and Archives, QMUL for continuing support on this and Open Access.

## FAQ

### Introduction

This guidance is intended to provide assistance in implementing the UK Scholarly Communications Licence and Model Policy (UK-SCL). It does not replace the UK-SCL (the terms of which should be read carefully) and does not constitute legal advice. Except where indicated below, this Guidance does not replace the footnotes to the licence and the model policy.

### Guidance and FAQ

#### Copyright and IP

**Q1. Is there a standard or recommended way of implementing the UK-SCL or is it a local matter for each university?**

A1. The UK-SCL is a licence combined with a model policy. It has been drafted as a licence because, where the academic retains ownership of copyright, this is the most reliable means of securing the objectives of the policy.

It is recognised that organisations have differing approaches to copyright ownership, and are likely to wish to integrate the UK-SCL with their existing policies (see below). However, an institution that retains copyright in academic outputs is not precluded from adopting the principles which underlie the UK-SCL. As long as a research organisation makes academic outputs available on the same terms as the UK-SCL (including, for example, making outputs available under a Creative Commons licence, within the same timeframes etc.) it would be considered as implementing the objectives of UK-SCL.

**Q2. Why does the UK-SCL assume that academics can grant the university a licence to their scholarly outputs?**

A2. The UK-SCL assumes that the academic retains ownership of copyright in scholarly articles and the other outputs to which the UK-SCL applies. This is because the practice of treating authors as copyright owners is widespread both among the universities that employ them and the publishers with whom they deal.

**Q3. Our university retains ownership of copyright and does not waive that right to academics. How do we implement the UK-SCL?**

A3. It is acknowledged that some universities retain ownership of copyright in academic outputs. They therefore presumably enter into contracts with publishers. Such universities, if they support the underlying aims of the UK-SCL (or are under obligations to this effect to funders) are free to exercise their rights as copyright owner in a manner consistent with the underlying intent of the UK-SCL. This would entail making scholarly outputs publicly available under the same terms as the UK-SCL. Such universities are invited to make a public statement to that effect, and to align the timing of manuscript deposit and availability with the UK-SCL.

**Q4. Our university retains ownership of copyright but permits academics to contract with publishers. How do we implement the UK-SCL?**

A4. Some universities claim ownership of copyright in academic outputs, but then allow academics to enter into contracts with publishers.

How the university implements UK-SCL will depend on:

1. whether its policies and procedures make clear that, in such circumstances, the university has 'waived' its rights; and
2. if so, at what point in time.

However, the term 'waiver' in relation to a university's rights needs to be treated with care. It may mean quite different things, depending on the context:

- a. It may be defined explicitly in a policy to mean a re-assignment of the copyright in an article to the academic.
- b. It may mean that the university allows academics to enter publisher contracts, with no explicit policy to that effect, in which case the academic is, in effect, being allowed to represent him or herself to the publisher as owner of the copyright in the article (and free to license or assign it in turn).
- c. Alternatively, it may simply mean that the academic has a licence from the university – although most publisher contracts would be inconsistent with that as they demand an exclusive licence or an assignment.
- d. A fourth possibility is that the university explicitly permits academics to enter into contracts with publishers in their own name, but on the university's behalf (in which case the academic is probably acting as the university's agent, possibly on an undisclosed basis so far as the publisher is concerned).

Because the legal consequences of each of these possibilities are different, ideally, a university's policies would make the position clear. This would include a statement about whether copyright is deemed to revert to the academic and, if so, when.

If a university's policies do not make the position clear, but academics are nonetheless allowed to enter into publisher contracts, there is a strong likelihood that this would be treated as transferring copyright in the article in question back to the academic, probably immediately before the publisher contract is entered into.

The recommendation for universities in this position is to clarify their policies and procedures but in any event to adopt UK-SCL as a backstop so that, if at any point, ownership of any copyright in articles and scholarly outputs transfers (or is deemed to transfer) to the academic, UK-SCL shall apply with immediate effect.

This would require the university to make a statement both internally and externally to the effect that, while it claims copyright, UK-SCL is also adopted so as to apply in the event that any changes in copyright ownership occur for any reason before deposit with the university of the article.

Where the university's policies make clear that an academic can conclude agreements with publishers as the university's agent or delegate, this may create other issues for the university (such as being bound by contracts of which it has little knowledge), but it would mean that, technically, the university retains copyright. In such cases the university should, in any public announcement of support, make clear that it owns copyright; and also, ideally, make clear in a separate internal communication to its academic staff that their authority does not extend to concluding contracts that are inconsistent with UK-SCL.

**Q5. How do we implement the UK-SCL in such a way that the licence is actually granted by each individual author?**

A5. For the UK-SCL to work, the first stage is that it must be adopted in such a way that the licence can be shown to have been actually granted by each individual author. Depending on whether or not the institution's IP policies are contractual, this will either require agreement with the members of staff concerned, or consultation with the relevant trade unions. A public statement by a university supporting the UK-SCL will not, on its own, be enough.

Because of the variety of employment arrangements and policies within institutions, the UK-SCL does not prescribe any particular method of adoption. Institutions will need to consider how best to incorporate the UK-SCL into their policies and regulations, taking into account the status of those policies, the terms of staff contracts, the extent to which these permit adoption of policies, and whether consultation is needed with staff or unions.

UK-SCL requires a licence to be granted to the employer institution pursuant to a policy that is adopted as part of the employment contract. There is nothing in employment law to prevent an employer and employee agreeing such a provision. The key issue is that the licence is indeed granted.

Although the UK-SCL is deliberately non-prescriptive on the method of adoption, it is suggested that widespread adoption of the UK-SCL is more likely via a mechanism which, if possible, incorporates the UK-SCL into an institution's contracts with staff in one go, rather than relying on individual sign-up.

## Publishers

**Q6. Notification of publishers**

A6. For the UK-SCL to achieve the desired objective, publishers must be put on notice of the fact that, in the case of any given author, the policy has been implemented and the licence actually granted by that author (hence the importance of adoption).

A first step is therefore for each institution to publicise the fact that it has adopted the UK-SCL. This should also be communicated to RLUK and JISC, who will maintain lists of adopters on their websites. The fact that a given author has granted a licence on the terms of the UK-SCL should then be ascertainable via author affiliation statements made on manuscript submission. The institutions that have adopted the UK-SCL may wish to issue joint communications to publisher organisations and the media.

Nothing should prevent universities that wish to communicate their adoption of the UK-SCL directly to publishers. Indeed, universities are encouraged to do so.

**The insertion of representations into JISC model licences is being investigated as this would be a further method of putting publishers on notice of a given institution's adoption of the UK-SCL.**

**Q7. Is the UK-SCL really binding on publishers?**

A7. Where an author retains copyright, if publishers are on notice that the author has granted a licence to the author's employer university on the terms of the UK-SCL, then this will be binding on the publishers, regardless of any subsequent assignment or licence of copyright by the author to the publisher.

## Validity in Scots and Northern Irish law

### **Q8. Is the UK-SCL valid under the laws of Scotland and Northern Ireland?**

A8. Subject to implementation of the UK-SCL, the UK-SCL will be effective under the laws of Scotland and Northern Ireland.

## Co-authorship

### **Q9. What type of authors does the UK-SCL apply to?**

A9. The UK-SCL applies to members of staff who are co-authors, as well as those who are sole authors. For these purposes, a co-author is anyone whose contribution to the article or other output attracts copyright (regardless of seniority, but not where a co-author is named for symbolic reasons only).

### **Q10. Why does the model policy require staff to “use all reasonable endeavours” to obtain a licence from co-authors?**

A10. Under UK copyright law all authors have to agree to the licence grant (unlike in US copyright law, where one author can grant a non-exclusive licence without seeking the permission of the others). With co-authored outputs, the UK-SCL cannot take effect under UK law until all co-authors have granted a licence on the terms of the UK-SCL. This means that a co-authored article (or other output) cannot be deposited and made accessible to the public unless all co-authors have granted permission.

Whether this happens will depend on whether (or not) the other co-authors are free to grant such licences. They might not be free to do so if their employer institution asserts ownership of copyright in their academic outputs. If they are free to grant permission, this would preferably be in such a way that the publisher is bound. If the university that employs the co-author has adopted the UK-SCL, then either the university or the co-author will be able to grant such a licence, and therefore the more widely the UK-SCL is adopted, the less co-authorship will present any problems.

### **Q11. Do staff have to seek permission from all co-authors?**

A11. No, they only have to ask authors who do not work at an institution that has adopted a similar policy.

### **Q12. What if a co-author objects?**

A12. In that case the manuscript has to be deposited under whichever terms the publisher allows - the member of staff would request a waiver.

### **Q13. How will staff seek permission from co-authors?**

A13. UK-SCL does not prescribe any particular method for securing licences from other co-authors. Such licences may be granted explicitly, for example in correspondence. They can also arise by estoppel, where a copyright owner allows a proposed use of a work to proceed, having been told about it. Universities may therefore wish to consider providing their staff with standard text which could be used in seeking requests from co-authors, such as:

"My university requires the right to make a copy of the accepted manuscript publicly available under a Creative Commons licence. I assume none of you will object to that. Our policy ensures that all of you have the right to do the same."

The final sentence of this proposed text reflects the fact that UK-SCL permits the university to sub-license the rights granted under it to co-authors and the universities that employ them. This should

facilitate the granting of licences of co-authored outputs although, as noted above, the more universities adopt the policy, the less it will be necessary to seek licences from co-authors.

Some co-authors will be employed by non-UK institutions, and so any right to use their contribution will have to be dealt with on a case by case basis (unless the overseas university adopts the UK-SCL or something like it).

### Third party content

#### **Q14. How is third party content dealt with?**

A14. The UK-SCL is intended to cover third party content which is included in an article (such as quoted text, illustrations etc). This means that staff will need to obtain permission from third party copyright owners, where required. It may not always be required (for example, where one of the statutory exceptions applies, as in the case of fair dealing for the purposes of quotation, or criticism and review).

Third party permissions may be granted by estoppel, as is the case with co-authors (see above).

Universities may wish to remind staff of any guidance available from library services about the correct use and clearance of third party copyright material.

#### **Q15. Does the UK-SCL apply to overseas authors?**

A15. UK-SCL is designed to apply to all individuals employed by the university, whatever their nationality. UK copyright legislation, implementing international treaties, provides that anyone domiciled or resident in the UK or a country to which UK legislation extends (which will include all signatories of the Berne Convention) is a "qualifying person" for these purposes. In general terms this means that the scholarly outputs of a foreign national employed by a UK university will attract a UK copyright which will be subject to the terms of the UK-SCL.

For the position of overseas co-authors not employed by a UK institution, see the previous section on co-authors.

### Moral rights

#### **Q16. What is the UK-SCL position on moral rights?**

A16. UK-SCL does not itself contain any statement about moral rights.

Under UK copyright law, the right to be identified as author is excluded in relation to anything done by the copyright owner where the copyright vested originally in the author's employer. Whether this exclusion is relevant to university employees will depend on the university's policy on copyright ownership (see section 1 above). The exclusion will not apply where the university accepts that copyright in scholarly outputs remains vested in the employee. However, in that case, an author would need to assert the right to be identified for it to arise under UK law, and the university's IP policy may have something to say about moral rights.

The [CC BY NC 4.0](#) licence requires any author identification to be retained if it is included in the material licensed under it, and otherwise reserves moral rights, subject to a limited waiver to enable exercise of the rights licensed. It is assumed that authors will identify themselves on any accepted manuscript provided under the UK-SCL (triggering the obligation to retain such identification under CC BY NC).

## Repository management

**Q17. The policy says the university will make the Accepted Manuscript (AM) available. What happens if we have to/want to remove it, for example when an article is retracted?**

A17. While the institution promises to make the manuscript available it does not promise to keep it online indefinitely; the AM could simply be removed from the repository.

## Miscellaneous

**Q18. If the staff member moves institution, do they keep the right to allow the next institution to make the AM available via their IR?**

A18. If the AM is already publicly available then everyone can re-use it under the terms of the CC BY NC licence. If staff move after depositing but before the AM becomes available then the staff member can still deposit at the new university but the university would only gain the CC BY NC usage rights when the AM becomes publicly available at the original repository, or if it has implemented a similar policy.

**Q19. What is the impact of the UK-SCL on pre-prints?**

A19. The UK-SCL requires the deposit of the AM, not the pre-print (so that funder requirements can be met). Staff remain free to share and deposit pre-prints if they wish and the UK-SCL does not restrict this in any way.