

<p>Title: Regulation for the legal deposit of UK on line publications</p> <p>Lead department or agency: Department for Culture Media and Sport</p> <p>Other departments or agencies:</p>	Impact Assessment (IA)
	IA No: DCMS006
	Date:
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
<p>Contact for enquiries: Daniel Halpern, DCMS</p>	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Legal Deposit Libraries Act 2003 (The 2003 Act)¹ reaffirmed existing provisions for the deposit of printed publications whereby 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. In addition, five other libraries (the National Libraries of Scotland² 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 Legal Deposit Libraries.

The 2003 Act also created a framework of legislation in which Regulations could be made for the deposit of non-print publications.

What are the policy objectives and the intended effects?

- To ensure a national archive of on line publications;
- To enable an efficient system in which material is archived and preserved in the Legal Deposit Libraries;
- To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders;
- To facilitate long-term preservation, so that the material may continue to be used in future; and
- To ensure long term viability by requiring both Legal Deposit Libraries and publishers to share part of the responsibility for archiving without imposing an unreasonable burden on any institution.

¹ See: http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1

² The Faculty of Advocates in Scotland acts as the deposit library for legal publications in Scotland

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

1. Do nothing, i.e. leave archiving responsibility to the market.
2. Voluntary deposit schemes, for permissions-based harvesting by Legal Deposit Libraries and publisher delivery of other works.
3. Statutory regulation, allowing libraries to harvest works directly from the internet.
4. Statutory regulation, allowing for web harvesting of freely accessible on line content and, upon request, publisher delivery of access-restricted on line content.
5. Statutory regulation allowing for web harvesting of both freely available and access-restricted on line content with, in addition, delivery of content by agreement if publishers prefer.

The Government ran a consultation³ on draft Regulations for non-print legal deposit between 30 September 2010 and 11 January 2011. In the light of the overall responses to the consultation, and the lack of evidence from both libraries and publishers to support the requirement that the Regulations do not impose a disproportionate burden, we did not believe Option 4 (our previous preferred option) was viable to go forward with the Regulations. Option 5 is a new proposal which removes any mandatory burden which might arise under option 4. We believe this will still provide a high quality national archive and will have a minimal impact on the publishing industry.

<p>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</p>	<p>A 7 year Sunset clause is in the draft Regulations and the policy will be reviewed then.</p>
<p>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</p>	<p>Legal Deposit Libraries will put in place a management structure that will be able to provide information for future policy reviews.</p>

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister



Date: 6/12/2011

³ Consultation on Regulations for non-print legal deposit <http://www.culture.gov.uk/consultations/7449.aspx>

Summary: Analysis and Evidence

Policy Option 1 – UK on line publications

Description: Do nothing, i.e. leave archiving responsibility to the market

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0	0
High	0		0	
Best Estimate	0		0	

Description and scale of key monetised costs by 'main affected groups'

There are no costs to the Libraries as it is purely up to the publishers to archive their material. Publishers that do create their own archives will incur costs but there would be no obligation to do so and therefore no way of calculating those costs.

Other key non-monetised costs by 'main affected groups'

Loss of documentary inheritance of books, papers, works of art and monuments of history and science that are only produced in digital format and not picked up by current legal deposits. The cultural value of this heritage is significant.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0	0
High	0		0	
Best Estimate	0		0	

Description and scale of key monetised benefits by 'main affected groups'

Whilst some professional publishers do archive their own material, all the available evidence suggests that the vast majority of individual publishers of freely available on line publications within the UK domain do not. Therefore a substantial proportion of the UK's cultural and intellectual output will be lost forever.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate

3.5

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO? Yes/No	Measure qualifies as IN/OUT
Costs:	Benefits:	Net:		

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom and Ireland		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			NA		
What is the annual change in enforcement cost (£m)?			NA		
Does enforcement comply with Hampton principles?			NA		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro NA	< 20 NA	Small NA	Medium NA	Large NA
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁴ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

⁴ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2 - – UK on line publications

Description:

Voluntary schemes, for permissions-based harvesting by libraries and publisher delivery of other works

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£27.2m	High: -£44.9m	Best Estimate: -£36.0m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£4.8m	10	£2.8m	£27.2m
High	£8.5m		£4.6m	£44.9m
Best Estimate	£6.6m		£3.7m	£36.0m

Description and scale of key monetised costs by 'main affected groups'

Libraries' costs for permissions-based harvesting total £0.7m - £0.9m per annum. Libraries' costs for voluntary deposit schemes total £0.6m - £0.8m rising to £0.9m - £1.3m. Set up costs total £2.2m - £3.1m over three years and ongoing costs of improving systems and preservation range from £0.4m - £1m pa. Publishers' costs are £0.4m - £1.0m rising to £0.9m - £2.4m for the administrative cost of deposit (£3 - £6.5 per deposit). Publishers' setup costs range from £0.2m to £1.4m in different years.

Other key non-monetised costs by 'main affected groups'

Publishers depositing works will be potentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made in them. To minimise this loss access to archived copies can be limited to the physical premises of the Libraries, limited to a certain number of people at any one time, or even embargoed for a period of time. If such access restrictions are deemed insufficient then the publisher can choose not to participate in the voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA		NA	NA
High	NA		NA	NA
Best Estimate	NA		NA	NA

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

There will be some preservation of the nation's on line published heritage but not in a systematic manner and the vast majority will not be captured. By year 10, only about 0.1% of freely accessible websites and publications, plus 40%-55% of other publications could be archived. See Table 2 for a full comparison of web archive size, e-books/e-newspapers/e-periodicals archived, and other benefits for each option.

Key assumptions/sensitivities/risks	Discount rate	3.5
<p>Without statutory protection publishers depositing, or website owners giving permission for a deposit library to harvest, may risk a claim for infringement of copyright for one or more reasons. The Legal Deposit Libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works. In addition, a person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation.</p>		

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: -1.5	Benefits: 0	Net: -1.5	Yes/No	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom and Ireland			
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?		UK Legal Deposit Libraries			
What is the annual change in enforcement cost (£m)?		Not known			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: NA		Non-traded: NA	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: NA		Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁵ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

⁵ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 3 – UK on line publications

Description:

Statutory regulation allowing libraries to harvest works directly from the internet for free content only and voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions.

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£30.3m	High: -£48.6m	Best Estimate: -£39.5m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	£4.8m	10	£3.2m	£30.3m
High	£8.5m		£5.0m	£48.6m
Best Estimate	£6.6m		£4.1m	£39.5m

Description and scale of key monetised costs by 'main affected groups'

Libraries' costs for harvesting total £0.9m - £1.3m pa rising to £1.4m - £1.9m. Libraries' costs for voluntary deposit schemes total £0.6m - £0.9m rising to £1.0m - £1.3m. Set up costs total £2.2m - £3.1m over three years and ongoing costs of improving systems and preservation range from £0.4m - £1.1m pa. Publishers' costs are £0.2m - £0.5m rising to £0.6m - £2.0m for the administrative cost of deposit (£3 - £6.5 per deposit). Publishers' setup costs range from £0.2m to £1.4m in different years.

Other key non-monetised costs by 'main affected groups'

Publishers depositing works will be potentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made in them. To minimise this loss access to all archived copies would be limited to the physical premises of the Libraries and to a certain number of people at any one time. Voluntary deposits could be embargoed for a period of time. If such access restrictions are deemed insufficient then the publisher can choose not to participate.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	NA	10	NA	NA
High	NA		NA	NA
Best Estimate	NA		NA	NA

Description and scale of key monetised benefits by 'main affected groups'

The new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of deposits and therefore will make savings and so accrue benefits from this option. The method for calculating these savings is explained under option 4 in the following section. However we recognise that monetising these benefits is not easy and while we have provided a broad estimate of the savings above we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies.

Other key non-monetised benefits by 'main affected groups'

Libraries will be able to harvest systematically, producing a single archive of the nation's on line published heritage for the benefit of researchers and future generations. By year 10 up to 100% of freely accessible websites and publications in scope, plus 40%-55% of other publications could be archived. See Table 2 for a full comparison of web archive size, e-books/e-newspapers/e-periodicals archived, and other benefits for each option.

Key assumptions/sensitivities/risks**Discount rate**

3.5

Without statutory protection publishers depositing, or website owners giving permission for a deposit library to harvest, may risk a claim for infringement of copyright for one or more reasons. The Legal Deposit Libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works. In addition, a person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. Material harvested under regulation will be protected against this, but it remains for material deposited under voluntary schemes.

Direct impact on business (Equivalent Annual) £m):

Costs: 1.2

Benefits: 0

Net: -1.2

In scope of OIOO?

Yes/No

Measure qualifies as

IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			UK Legal Deposit Libraries and the courts		
What is the annual change in enforcement cost (£m)?			Not known		
Does enforcement comply with Hampton principles? Not sure?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁶ Statutory Equality Duties Impact Test guidance Mandatory?	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

⁶ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 4 – UK on line publications

Description: Statutory regulation, allowing for web harvesting of freely accessible on line content and, upon request, publisher delivery of access-restricted on line content.

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£20.3m	High: -£41.0m	Best Estimate: -£30.6m

	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	£7.4m	10	£3.7m	£36.7m
High	£13.9m		£6.4m	£63.8m
Best Estimate	£10.6m		£5.0m	£50.2m

Description and scale of key monetised costs by 'main affected groups'

Libraries' costs for harvesting total £0.9m - £1.3m pa rising to £1.4m - £1.9m. Libraries' costs for notification-based deposit total £0.8m - £1.2m rising to £1.0m - £1.5m. Set up costs total £2.2m - £3.1m over three years and ongoing costs of improving systems and preservation range from £0.4m - £1.1m pa. Publishers' costs are £0.3m - £1.0m rising to £1.3m - £3.9m for the administrative cost of deposit (£3 - £6.5 per deposit). Publishers' setup costs range from £0.3m to £2.9m in different years.

Costs to publishers of £10.5m (low) to £27.4m (high) with a best estimate (mid-point) of £18.9m (in NPV terms over 10 years).

Other key non-monetised costs by 'main affected groups'

Publishers depositing works will be potentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made in them. To minimise this loss access to all archived copies would be limited to the physical premises of the Libraries and to a certain number of people at any one time. For particular high value / low volume publications embargoes could be agreed for a period of time.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	NA	10	NA	£16.4m
High	NA		NA	£22.8m
Best Estimate	NA		NA	£19.6m

Description and scale of key monetised benefits by 'main affected groups'

Description and scale of key monetised benefits by 'main affected groups' The new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of deposits and therefore will make savings and so accrue benefits from this option. The method for calculating these savings is explained under option 4 in the following section. However we recognise that monetising these benefits is not easy and while we have provided a broad estimate of the savings above we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies.

A total 10-year savings (benefits) of £16.4m (low) to £22.8m (high) and a best estimate (mid-point) of £19.6m (in NPV terms over 10 years),

This gives an average net benefit to business of £0.2m (best estimate).⁷

Other key non-monetised benefits by 'main affected groups'

Libraries will be able to harvest systematically, producing a single archive of the nation's on line published heritage for the benefit of researchers and future generations. Up to 100% of freely accessible websites and publications, plus 100% of other publications could be archived. . This option assures the conservation and protection of up to 100% of the nation's documentary inheritance of books, papers, works of art and monuments of history and science. this option sustains and develops a world-class research base, which can be exploited to support innovation across all sectors of the economy.

Key assumptions/sensitivities/risks

Discount rate

3.5

Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through section 8, copyright and database rights are not infringed by the deposit libraries harvesting copies from the internet, and through section 9 the publisher is also protected against infringement of copyright, publication right or database rights, and against any claim for breach of contract, in respect of deposited copies. In addition, the operation of section 10 of the 2003 Act dramatically reduces the risk of liability for any defamation claims in respect of the archived copies.

The Government ran a consultation on draft Regulations for non-print legal deposit between 30 September 2010 and 11 January 2011. In the consultation we asked respondents to provide information about costs to publishers and for depositing non-harvestable content. This option included the need to deposit complex information such as databases and streamed content at the publisher's costs. The evidenced gathered from the consultation showed these costs could be significant higher than estimated. In light of the overall responses to the consultation, there was not sufficient evidence to show that the Regulations do not impose a disproportionate burden to publishers to deposit non-harvestable content. We have therefore done no further work on exploring this option.

Direct impact on business (Equivalent Annual) £m):

Costs: 2.3

Benefits: 2.5

Net: 0.15

In scope of OIOO?

Yes/No

Measure qualifies as

IN/OUT

⁷ In 2005 an estimate was made of the admin burden placed on publishers of hard-copy legal deposit which was in the region of £53m. However we recognise that this was not an accurate figure. This figure, produced by PWC, was part of a wider exercise to give an indication of the costs that Government places on businesses, not to produce statistically accurate data for each regulation. The Standard Cost Model was used, which works on a relatively simple methodology, by measuring the cost (in terms of the time it takes to complete and any external costs) of completing one transaction and then multiplying it by the number of times it happens. These costs were established through interviews with publishers. It is not clear if these figures include the cost of the publications themselves. Therefore, these are not accurate costs, but rather are indicative of the burden placed on business by the regulation.

However we do know that the regulations will lessen the admin burden and therefore have attempted a benefit calculation to monetise these savings and produce indicative benefits.

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom and Ireland		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			UK Legal Deposit Libraries and Courts		
What is the annual change in enforcement cost (£m)?			Not known		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁸ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	Yes	76
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

⁸ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 5 – UK on line publications

Description: Statutory regulation, allowing for web harvesting of both freely available and access-restricted on line content with, in addition, delivery of content by agreement if publishers prefer.

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£19.1m	High: -33m	Best Estimate: -£-26m

	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£4.8m	£3.3m	£31.4m
High	£8.5m	£5.2m	£50.1m
Best Estimate	£6.6m	£4.3m	£40.8m

Description and scale of key monetised costs by 'main affected groups'

Libraries' costs for harvesting total £0.9m - £1.3m pa rising to £1.4m - £1.9m. Libraries' costs for notification-based deposit total £0.9m - £1.3m rising to £1.1m - £1.5m. Set up costs total £2.2m - £3.1m over three years and ongoing costs of improving systems and preservation range from £0.4m - £1.1m pa. Publishers' costs are £0.2m - £0.5m rising to £0.6m - £2m for the administrative cost of deposit (£3 - £6.5 per deposit). Publishers' setup costs range from £0.2m to £1.4m in different years.

Costs to publishers of £5.2m (low) to £13.7m (high) with a best estimate (mid-point) of £12.1m (in NPV terms over 10 years).

Other key non-monetised costs by 'main affected groups'

Publishers depositing works will be potentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made in them. To minimise this loss access to all archived copies would be limited to the physical premises of the Libraries and to a certain number of people at any one time. For particular high value / low volume publications embargoes could be agreed for a period of time.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	£12.3m
High	NA	NA	£17.1m
Best Estimate	NA	NA	£14.7m

Description and scale of key monetised benefits by 'main affected groups'

Description and scale of key monetised benefits by 'main affected groups' The new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of deposits and therefore will make savings and so accrue benefits from this option. The method for calculating these savings is explained under option 4 in the following section. However we recognise that monetising these benefits is not easy and while we have provided a broad estimate of the savings above we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies.

A total 10-year savings (benefits) of £12.3m (low) to £17.1m (high) and a best estimate (mid-point) of £14.7m (in NPV terms over 10 years).

This gives an average net benefit to business (best estimate) of £0.7m.⁹

Other key non-monetised benefits by 'main affected groups'

Libraries will be able to harvest systematically, producing a single archive of the nation's on line published heritage for the benefit of researchers and future generations. Up to 100% of freely accessible websites and publications, plus 100% of other publications could be archived. See table 2 for a full comparison of web archive size, e-books/e-newspapers/e-periodicals archived, and other benefits for each option.

Key assumptions/sensitivities/risks

Discount rate

3.5

Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through section 8, copyright and database rights are not infringed by the deposit libraries harvesting copies from the internet, and through section 9 the publisher is also protected against infringement of copyright, publication right or database rights, and against any claim for breach of contract, in respect of deposited copies. In addition, the operation of section 10 of the 2003 Act dramatically reduces the risk of liability for any defamation claims in respect of the archived copies.

As there is no requirement for the publisher to deposit content that cannot be deposited using a harvesting process the cost that proved prohibitive for option 4 are no longer relevant.

Direct impact on business (Equivalent Annual) £m):

Costs: 1.16

Benefits: 1.86

Net: 0.70

In scope of OIOO?

Yes/No

Measure qualifies as

IN/OUT

⁹ In 2005 an estimate was made of the admin burden placed on publishers of hard-copy legal deposit which was in the region of £53m. However we recognise that this was not an accurate figure. This figure, produced by PWC, was part of a wider exercise to give an indication of the costs that Government places on businesses, not to produce statistically accurate data for each regulation. The Standard Cost Model was used, which works on a relatively simple methodology, by measuring the cost (in terms of the time it takes to complete and any external costs) of completing one transaction and then multiplying it by the number of times it happens. These costs were established through interviews with publishers. It is not clear if these figures include the cost of the publications themselves. Therefore, these are not accurate costs, but rather are indicative of the burden placed on business by the regulation.

However we do know that the regulations will lessen the admin burden and therefore have attempted a benefit calculation to monetise these savings and produce indicative benefits.

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom and Ireland		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			UK Legal Deposit Libraries and Courts		
What is the annual change in enforcement cost (£m)?			Not known		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹⁰ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	Yes	83
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹⁰ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No	Legislation or publication
1	Legal Deposit Libraries Act 2003 (http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1)
2	Regulatory Impact Assessment for Legal Deposit Libraries Bill, 2003 (http://www.culture.gov.uk/images/publications/RIALegalDepositLibrariesFinalMArch2003.pdf)
3	Consultation: Proposal on the Collection and Preservation of UK Off line and Microform Publications and UK On Line Publications (Available free of charge and without access restrictions) (http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/reference_library/consultations/6506.aspx)

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	1.95	1.15	1.15	0.27	0.27	0.27	0.27	0.27	0.53	0.53
Annual recurring cost	2.93	3.29	3.56	4.20	4.51	4.58	4.69	4.75	4.93	5.24
Total annual costs	4.88	4.44	4.70	4.46	4.78	4.85	4.95	5.02	5.47	5.77
Transition benefits										
Annual recurring	1.07	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.53	0.53
Total annual benefits	1.07	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.53	0.53



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Issue under consideration

The disappearance of heritage in whatever form constitutes a loss of value, and nations aim to maintain, increase and diffuse knowledge by assuring the conservation and protection of their documentary inheritance of books, papers, works of art and monuments of history and science. For printed (non-digital) publications this issue is normally addressed by national libraries and archives, sometimes together with selected research libraries, systematically building and preserving a comprehensive collection of their nation's published output. Typically this activity is supported by a legal framework which requires publishers, at their own cost, to deposit a copy of each work with the specified library or libraries—known as “legal deposit”. This helps to ensure there is a single archive, overcoming potential coordination issues within a large and diverse sector.

A statutory legal deposit system has existed in the UK for more than 300 years for printed works. However resources of information and creative expression are increasingly being produced, distributed, accessed and maintained in non-print form. Without appropriate legal, technical and institutional frameworks to secure the protection of this non-print heritage, it is at risk of being lost forever.

This risk is recognised by the research community and by many publishers, especially those producing publications of scholarly or historical interest. It is also common to most nations and governments; for example on 15 October 2003 the UNESCO member states adopted a Charter on the Preservation of the Digital Heritage and there are, or have been, initiatives in many countries to extend the legal deposit system to include digital publications. This Impact Assessment considers options for addressing it in the UK, in relation to digital content which is published via the internet for download or viewing on line.

Rationale for intervention

The UK's legal deposit system has evolved over the centuries but can be traced back to statutes for England and Wales in 1662 and for the whole United Kingdom in 1710. The current Legal Deposit Libraries Act 2003 obliges publishers to deposit, at their own cost, one copy of every printed publication that is published or distributed in the UK with the British Library and, upon request, with up to five other libraries:

- British Library (“BL”)
- Bodleian Library, Oxford (“Bodleian”)
- National Library of Scotland (“NLS”). Note: the Act also confers rights for access to legal works deposited with NLS upon the Library of the Faculty of Advocates (“FoA”)
- National Library of Wales (“NLW”)
- University Library, Cambridge (“CUL”)
- Library of Trinity College, Dublin (“TCD”)

The Legal Deposit Libraries Act 2003 extends existing legal deposit provisions for printed material to cover non-print works. The 2003 Act gives the Secretary of State for Culture Media and Sport the powers to make secondary legislation bringing new and emerging publishing media under its scope. Such regulations must be approved by the affirmative resolution of each House of Parliament and may not be made unless both the Legal Deposit Libraries and publishers likely to be affected have been consulted and unless the Secretary of State is satisfied that the regulations do not unreasonably prejudice the interests of persons who publish works to which the regulations relate and there are not disproportionate costs to publishers. In 2005, the Department for Culture Media and Sport set up the Legal Deposit Advisory Panel as an independent advisory non-departmental public body, working at arms length from the Government to advise and make recommendations upon the content of such regulations or other options.

The Legal Deposit Advisory Panel submitted their recommendations to the Secretary of State for Culture Media and Sport and a public consultation exercise was undertaken at the beginning of 2009 on the Panel's recommendations.

Policy Objectives

- To ensure a national archive of on line publications;
- To enable an efficient system in which material is archived and preserved in the Legal Deposit Libraries;
- To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders;
- To facilitate long-term preservation, so that the material may continue to be used in future; and
- To ensure long term viability by requiring both Legal Deposit Libraries and publishers to share part of the responsibility for archiving without imposing an unreasonable burden on any institution.

Summary of options

Option 1 - Do nothing

Leave archiving responsibility to the market

Option 2 - Voluntary deposit schemes, for permissions-based harvesting by Legal Deposit Libraries and publisher delivery of other works.

The second option is to encourage central archiving initiatives by the Legal Deposit Libraries, but on a voluntary basis with publishers.

Option 3: Statutory regulation allowing libraries to harvest works directly from the internet for free content only and a voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions.

The third option is to facilitate central archiving initiatives by the Legal Deposit Libraries, through passing statutory regulation which would automatically give them permission, as an exception to copyright, to download copies of works directly from the internet for archiving purposes.

Option 4: Statutory regulation, allowing for web harvesting of freely accessible on line content and, upon request, publisher delivery of access-restricted on line content.

The fourth option is to make regulations which both facilitate harvesting by the Legal Deposit Libraries and also imposes an obligation upon a publisher to work with the Legal Deposit Libraries in ensuring that other (generally, access-restricted) material is archived.

Option 5 Statutory regulation, allowing for web harvesting of both freely available and access-restricted on line content with, in addition, delivery of content by agreement if publishers prefer.

Deposit libraries will request and collect freely available and access-restricted on line work (which is within scope of the 2003 Act) by means of web harvesting software. Where the content is freely available the web harvester will simply visit the website and collect the content. Where the content is subject to an access restriction, the request by the web harvester to the login page will be deemed to be a request for the content behind that login page. The publisher will have 14 days prior notice to provide login details to the deposit library to allow for the delivery of the access-restricted content. If the publisher does not provide login details to allow for delivery, the publisher will be in breach of the obligation under the 2003 Act to deliver and will be subject to the enforcement provisions regarding delivery in the 2003 Act.

In addition to this regime, a publisher may agree with a deposit library an alternative way to deliver on line material. This is a voluntary, alternative option which publishers may choose to adopt if they wish, but if publishers do not agree an alternative method of delivery, they will remain subject to the full obligation to deliver by way of web harvester.

Proposal 5 lessens the burden on publishers that would have been placed on them under option 4 as the only obligation to deliver is by web harvester and there is no obligation to provide back ground databases, complex files and other costly operating systems. If works cannot be deposited via the harvesting process then it **doesn't** have to be deposited.

Table 1: Summary of options

Option	Harvesting free sites (web archiving)	Harvesting non-free sites and content	Deposit of non-harvestable content
Option 1	NA	NA	NA
Option 2	Permission-based	Permission-based	Voluntary
Option 3	Regulation	Permission-based	Voluntary
Option 4	Regulation	Regulation	Regulation
Option 5	Regulation	Regulation	Regulation with agreement only.

Table 2: Summary of costs and benefits for each option

<i>10-year totals</i>	<i>Option 1</i>	<i>Option 2</i>	<i>Option 3</i>	<i>Option 4</i>	<i>Option 5</i>
Legal Deposit Libraries' operating costs (£M's)	0	21.6 – 30.0	28.0 – 39.0	29.4 – 40.8	29.4-40.8
Legal Deposit Libraries' set-up costs (£M's)	0	2.2 – 3.1	2.2 – 3.1	2.2 – 3.1	2.2-3.1
Publishers' burden: transaction costs (£M's)	0	6.3 – 15.8	3.8 - 11.4	7.6 – 22.9	3.8-11.4
Publishers' burden: set-up costs (£M's)	0	2.6 – 5.4	2.6 – 5.4	5.2 – 10.8	2.6-5.4
Benefits: websites archived (millions)	0	0.01 – 0.02	12.8 -17.5	12.8 -17.5	12780-17750
Benefits: web archive size (terabytes)	0	50 – 75	4500 – 6250	4500 – 6250	4500-6250
Benefits: e-books archived (000's)	0	238 –	238 – 330	475 – 650	238 – 33
Benefits: e-newspapers archived (000's)	0	396 – 550	396 – 550	792 – 1100	396-550
Benefits: e-periodicals archived (000's)	0	634-880	634-880 – 900	1267 – 1760	634-880
Other: Offset costs & burden of print deposit	No	No	No	Yes	Yes for publishers depositing by agreement (estimated 50% overall)
Other: Mitigation of legal risks	No	No	Harvested websites only	Yes: harvested websites and other publications	Yes: harvested websites and other publications

Option 1: Do nothing, i.e. leave archiving responsibility to the market

The first option is not to take any central, public sector initiative; the private sector and market forces would have to assume all responsibility for developing, maintaining, preserving and providing access to an archive of the UK's on line publications. The Legal Deposit Libraries would continue to collect and archive printed publications for the nation, under existing legal deposit provisions, but would not actively seek to archive on line publications in any systematic way. Individual publishers might approach a deposit library to archive on line publications on its behalf, but this would be subject to separate negotiations and cost-benefit analysis for the specific circumstances.

However, whilst some professional (typically large) publishers archive their own material, enquiries by the Legal Deposit Advisory Panel show that the vast majority of UK publishers do not. Therefore a substantial proportion of the UK's cultural and intellectual heritage would be lost forever.

Furthermore, in general the relatively small number of publishers who archive their material do not usually permit access to the archived copies, except in the case of a system failure affecting their main public offering; or they might make them accessible on a commercial basis in exchange for subscription or payment. Therefore this option is not entirely without cost to Legal Deposit Libraries, universities and other publicly-funded research institutions who subscribe for access by their users, although the overall impact is negligible because so few archives are made accessible in this way. Also, there is no overall systematic or co-ordinated approach; private sector archiving initiatives tend to be arranged individually, with different partner organisations and in different locations, potentially making it difficult for future researchers to know where to find the content. So the benefits to researchers are very limited. Overall this option does not meet any of the policy objectives—although it would not involve any cost, nor would it achieve any public benefits.

Option 2: Voluntary deposit schemes, for permissions-based harvesting by Legal Deposit Libraries and publisher delivery of other works.

The second option is to encourage central archiving initiatives by the Legal Deposit Libraries, but on a voluntary basis with publishers.

It would not be feasible for the Government or Legal Deposit Libraries simply to purchase a copy of every publication for archiving, partly because of the extra cost to the public purse but mainly because, for digital content, payment does not necessarily give the purchaser a right to download, use and keep a copy of the work for preservation—frequently it is in the form of a licence or subscription only allowing access to read, and for a fixed period.

For most websites and some on line publications, the Legal Deposit Libraries can download copies directly from the internet for archiving purposes, but only after first obtaining copyright permission from each rights holder. The British Library's existing UK Web Archive, re-launched in February 2010 with material collected from 2005 onwards, has been developed on this basis (<http://www.webarchive.org.uk/ukwa/>). Periodic "snapshots" are taken of selected websites, incorporated into the archive and made available on line to researchers, after the website owner has confirmed in writing that the Library may do so. However a limitation of this approach is that the website or on line publications must be freely available, i.e. published without access restrictions, before they can be captured by a deposit library's harvesting system.

Therefore, for all other on line publications where permissions-based harvesting is impractical, the Legal Deposit Libraries would also need to work with the publishing trade associations to agree and set up voluntary deposit schemes, encouraging individual publishers to deposit or permit the Legal Deposit Libraries to download copies of their publications. For example a voluntary deposit code for off line publications (on CD, DVD or other hand held media) and microform publications has already been in operation for several years, and a voluntary deposit scheme for scholarly e-journals was set up in 2007. The terms of both schemes may be reviewed via the BL's website: <http://www.bl.uk/aboutus/stratpolprog/legaldep/index.html>.

Option 2 therefore comprises two elements: permissions-based harvesting by the Legal Deposit Libraries where practical for certain types of material, combined with voluntary schemes in which publishers deposit or provide access for the Legal Deposit Libraries to download copies of other works.

Option 2: Costs and benefits

a) Deposit library web harvesting (permissions-based)

Benefits, and the costs to Legal Deposit Libraries, of adding to, maintaining and preserving the web archive on a permissions basis, have been analysed by reference to actual experience at the British Library, National Library of Scotland and National Library of Wales over the last five years in developing the UK Web Archive. The UK Web Archive is now provided by the British Library in partnership with the National Library of Wales, Joint Information Systems Committee, and the Wellcome Library; between 2004 and 2008, as a UK Web Archiving Consortium, the group also included National Library of Scotland and the National Archives.

According to Nominet, the registrar for all .uk domains, except .gov.uk and .ac.uk, over 8.5 million domains were registered in May 2010. After adjustments to subtract non-active or other out-of-scope websites and to add readily identifiable UK websites in .com and other domains, the Legal Deposit Advisory Panel estimates that approximately 5.4 million websites were potentially in scope for harvesting as at June 2010, rising to perhaps 14.2 million by 2020. The need to obtain prior copyright permission from each rights holder means that, in this option, a domain-wide snapshot of all 5.4 million websites is a practical impossibility. Instead, the process first requires a deposit library to pre-select individual websites, identify and contact the website owner, then discuss or negotiate the terms on which their content might be archived.

However it is often difficult or impossible to identify the appropriate person, as organisations frequently provide only general (non-specific) contact details on their websites or to the domain registrar. Furthermore, the deposit library's request for permission often goes unanswered, for a variety of

reasons. Since January 2005, the British Library has pre-selected 15,018 websites (as at 30 April 2010), but was only able to submit requests to 14,035 and, of these, successfully obtained written permission in just 3,411 cases, or 23% of those initially pre-selected. The National Library of Scotland and National Library of Wales have focused on fewer websites (each below 20% of the number targeted by the British Library) that are of particular Scottish or Welsh cultural interest; their success rate has therefore been marginally higher, but their experiences have been similar. Overall, the Legal Deposit Libraries estimate that, in this option, they would only be able to obtain permission successfully for between 700 and 1200 new websites each year within current staffing levels.

Once permission in writing has been obtained, the relevant deposit library may use harvesting software to collect snapshots or “instances” of the website automatically. The frequency of such snapshots will vary for each website, depending upon its research value and the extent and frequency with which the contents change; but a typical frequency is once every six months for those already participating in the UK Web Archive. As Legal Deposit Libraries gain experience, and software improvements are made, the average frequency might increase but, in this Impact Assessment, an average of two to four snapshots per annum is assumed.

The harvesting software collects and generates basic metadata as part of the automated process, although quality assurance and other manual interventions are also needed to ensure that the content gathered is complete and coherent as a snapshot, and to add further descriptive information for users of the archive. Once this work is completed, the snapshot is uploaded to the archive, stored in the secure repository of the shared infrastructure which is purpose-designed to minimise the risk of any content being corrupted or lost, and made available for use.

Overall, the Legal Deposit Libraries’ costs for supporting this activity are estimated in the following table:

Table 3: Cost of deposit library permissions-based harvesting under Option 2

Costs of selecting and obtaining permission for approximately 700 to 1200 new websites each year.	£0.2m-£0.3 per annum
Costs of harvesting and quality-assuring permitted websites four times per annum, with metadata and discovery tools.	£0.3m to £0.4m per annum
Annual costs of storage with technical support for archived websites (estimated 8 terabytes in Year 1, rising to an accumulated 60 terabytes by Year 10)	£0.1m-£0.2m per annum
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.7m- £0.9m per annum

This equates to roughly £13,000 per annum for each terabyte of data archived over a ten-year period. The benefits of this activity will be received mainly by researchers and future generations, being able to use the archive as a resource, and by the nation through safeguarding a part of its digital heritage. In addition to the existing UK Web Archive (26,460 instances of 7,142 websites, totalling 6.4 terabytes), over a ten-year period a further 7,000 to 12,000 websites, in snapshots or instances totalling 50 to 80 terabytes, could perhaps be archived.

In addition, website owners normally give permission for archived instances of their website to be made freely available on the web. Therefore the archive would be accessible to any web user worldwide and researchers could use it from their homes, offices or other places of work, at any time of day, without having to travel to one of the Legal Deposit Libraries.

However the need to obtain prior copyright permission is a severe constraint on benefits; these numbers represent only about 0.1% of UK websites, a tiny proportion of the whole, and 99.9% could remain at risk of being lost forever. Because of the way that websites are formed, with links to other websites and resources, this might also mean that many of those harvested will appear incomplete because of broken links.

Furthermore it is inevitable that some material, despite being specially selected for its importance and research value, will not be archived because rights holders are unwilling or unable to give permission.

b) Voluntary scheme for on line publications for which there are a charge or which are subject to public access restrictions

For many works, it is not technically possible for Legal Deposit Libraries to download copies directly from the internet without the publisher providing the means to bypass a pay wall or access barrier. In some such cases both publisher and deposit library would prefer the publisher to deliver works to the library in discrete information packages rather than allow the deposit library to bypass normal website security and download the content directly, although both must also be available as an option.

Also, whereas part of the usefulness of a web archive is its breadth, gained by periodic snapshots of multiple websites at once, other publications such as e-books, digital newspapers, e-journals and other electronic periodicals are typically discrete works and may be more usefully processed as separate, individual items for discovery and study in the Legal Deposit Libraries' archives. This involves a corresponding need to obtain or create better descriptive metadata and the processes involved in depositing, acquiring, processing, preserving and making such a work available for discovery and use by researchers, are all very different from the processes which support an archive of harvested websites.

Many publishers are very supportive of voluntary deposit initiatives and few publishers actively oppose them; nevertheless experience from the existing voluntary scheme for e-journals and other voluntary deposit schemes is that, without a legal framework to support the schemes, in practice only 20%-25% of publishers invited to deposit actually do so, although the ratio may be higher for larger publishers of scholarly journals and other work of academic interest. Some do not participate because they are not required to do so, but others may not participate because of copyright complications and legal or other risks in depositing on a voluntary basis. Therefore, a high proportion of the effort the Legal Deposit Libraries make to identify, contact and request publishers to deposit their material is effectively wasted, adding to overall costs. We estimate the following scenario under this option:

- In Year 1, up to approximately 60,000 publications (monographs and serial parts) would be deposited, processed and archived.
- By Year 4, approximately 100,000 to 140,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 18% to 26% of those eligible for deposit.
- By Year 10, approximately 210,000 to 300,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 40% to 55% of those eligible for deposit.¹¹

Taking these considerations into account, the following deposit library costs are estimated for voluntary deposit schemes.

Table 4: Cost of voluntary deposit schemes under Option 2

Acquisition costs (promoting deposit schemes and negotiating voluntary agreements with individual publishers)	£0.3m-£0.4m per annum
Ingest costs, including processing metadata to make the content discoverable and accessible for researchers.	£0.3m-£0.5m in Year 1, rising to £0.7m-£0.9m p.a. by Year 10
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.6m-£0.8m in Year 1, rising to £0.9m to £1.3m p.a. by Year 10

Option 2: Risks

Risk of Loss — by year 10, only about 0.1% of freely accessible websites and publications, plus 40% to 55% of other individual publications made available each year would be archived. Therefore most of the remaining 99.9% of websites and 45% to 60% of other publications risk being lost forever.

¹¹ An assumption that voluntary would only ever achieve 50% of the total universe, based on real experience from voluntary trials so far. Plus gradually scaling up over ten years in line with Libraries' budgets and change plans to cope with the migration from print to digital.

This approach does not give the legal protection that would be afforded to the Legal Deposit Libraries and publishers if Regulations are put in place against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.

Copyright Risk — Publications, including websites and other digital files made available on the internet, are protected by copyright. They may also contain content that has been produced by several contributors, such as articles or chapters by different authors and images by photographers or artists, each of whom may own the rights to their work and have negotiated specific terms on which it can be used; these terms may not allow for copies to be deposited and made available to researchers as part of an archive.

Therefore the publisher depositing, or the website owner giving permission for a deposit library to harvest, may risk a claim for infringement of copyright for one or more reasons.

- The publisher may be ignorant of copyright law and simply deposits or gives permission without giving proper consideration to intellectual property rights. There is evidence, from case studies undertaken by the Legal Deposit Advisory Panel, that many website owners are unaware of their potential liability, for instance believing wrongly that content made freely available on the web is not copyrighted and that anyone may copy and reuse without legal consequences.
- The publisher, although attempting to clear rights before depositing or giving permission, may be unable to identify or contact some rights holders; evidence of attempts to do so might help defend against a claim, but the publisher would nevertheless incur costs in dealing with it.
- For websites and on line publications which include content from multiple contributors, such as some magazines or newspapers, the publisher may clear rights at a point in time but then fail to monitor and update the rights as content is updated and new content is added.

The Legal Deposit Libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works.

- Content delivered by a publisher is normally deposited without any confirmation or clarification about the associated rights for using it, and the library must simply rely upon the terms of the voluntary scheme. For reasons of long-term preservation and continuing access, Legal Deposit Libraries usually need to make additional copies or “format shift” the content, and providing on line access to it might be considered a form of republishing; although these uses may be made clear in the terms of the scheme, they may not be sufficient to defend the claims of a third party rights holder who was not made aware of the deposit and who did not give specific permission.
- Permissions given by a website owner may not cover all of the site’s content; if this is not clear, a deposit library might inadvertently copy parts of it for archiving without appropriate authority.
- A court might find that Legal Deposit Libraries cannot rely upon the permissions given by a website owner.

Defamation Risk — a person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. For example the complainant might have obtained a decision (whether via the court or by a separate settlement with the publisher) for all copies to be withdrawn or for an apology or retraction to be published, but the archived copy remains as first published. And under case law (*Loutchansky v Times Newspapers Ltd and Others No 2*) it may be argued that creating a temporary screen copy of a digital work, which happens each time that a person accesses a digital work, constitutes a form of re-publishing and therefore the deposit library might arguably be creating a new defamation. The Legal Deposit Libraries will put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. However such procedures would typically depend upon the Legal Deposit Libraries being made aware of the defamation by the original publisher, who might also therefore bear some responsibility if there is any failure in communications. Given the nature of some websites and the material they contain, the likelihood of defamatory material being inadvertently collected and included with the archive is relatively high, and this may therefore be a significant risk.

Option 2: Administrative burden calculations

The administrative burden for Legal Deposit Libraries has already been included within the costs above. This section considers the administrative burden for publishers in dealing with requests from the Legal Deposit Libraries and in depositing works or arranging permission for harvesting.

Deposit library harvesting (permissions-based)

Since January 2005, the British Library has sent permission requests to 14,035 website owners (as at 30 April 2010), but successfully obtained written permission in only 3,411 cases, or 24.3% of those actually contacted. The experiences of other Legal Deposit Libraries and members of the UK Web Archive are similar. Therefore, on the basis of this ratio, in order that the Legal Deposit Libraries may secure permission for 700-1200 new websites each year, at least 2,800 to 4,800 website owners must be contacted.

The administrative burden for each of these website owners varies widely, depending upon the nature of the website and whether it includes content from a single or multiple rights holders, and upon the nature, size and structure of the organisation publishing it. For instance it is administratively easy for a single individual such as a blogger, writing and publishing their own material via their own website, to provide permission, because they would be the sole rights holder for their own material; it may simply require half an hour to read and consider the request then sign a form and send it back to the relevant deposit library. But in other cases it may involve many person-hours of administrative effort: for example, a large national museum displaying pictures and descriptions of their treasures together with articles and other content might need to involve several people within the museum to identify and assess their own position, before also perhaps contacting multiple rights holders outside the museum. Even if their decision is that permission cannot be granted, the website owner will have an administrative burden simply by receiving and dealing with the deposit library's request, and so will the individual rights holders.

Publishers surveyed by the Legal Deposit Advisory Panel confirmed that dealing with permission requests can be a costly process, although none quantified the amounts involved. However based upon an assumption that 80% of persons receiving a request would need to refer to at least one other person in their organisation, and that at least half of such organisations would need to contact 2 or more rights holders who also reply, and that each stage takes up to half an hour of administrative time and effort, then the overall administrative burden might be a once-only cost of at least £90 per website, or a minimum of £0.25m to £0.4m per annum for 2800 to 4800 requests, potentially much more. This also excludes the probability that many website owners would also need to put procedures in place to monitor for any change to their rights position, and potentially update the permission given to the Legal Deposit Libraries.

b) Voluntary deposit schemes

The administrative burden for publishers in depositing under a voluntary scheme comprises three main elements:

1. administration in dealing with the original request and/or decision to participate in the voluntary scheme, including perhaps an assessment of the risks and benefits to the publisher.
2. administration, and perhaps technical support, to set up a depositing mechanism and process with the Legal Deposit Libraries for delivering material or permitting access to download.
3. the transactional costs of each individual deposit or delivery.

There is no authoritative or recognised analysis, broken down by type of publication or publisher, of the number of digital works that are being published in the UK behind a pay wall or with some other form of restriction upon access. Impacts have therefore been estimated by reference to print, taking the average number of legal deposit deliveries to the British Library of (printed) monographs, newspaper issues and serial issues each year during 2006/07 to 2008/09 as a baseline:

- 116,822 Monographs
- 148,844 Newspaper issues
- 271,432 Periodical issues

The Office for National Statistics produces annual reports ("UK Business: Activity Size & Location") of the number of UK organisations registered for VAT and/or PAYE by industry type. The average of ONS figures produced in 2007-09 for Standard Industrial Classification codes 2211, 2212, 2213, 5811, 5813

and 5814 (publishing organisations) have been used to estimate the potential number of organisations, broken down by number of employees that may be affected by this proposal.

Table 5: Number of publishing organisations

	Book Publishers	Newspaper Publishers	Periodical Publishers	TOTAL
Micro (1 to 9)	2,212	387	1,747	4,346
< 20 (10 to 19)	125	28	227	380
Small (20 to 49)	78	27	173	278
Medium (50 to 250)	50	12	93	155
Large (250+)	15	23	37	75
Total	2,480	477	2,277	5,234

It must be acknowledged that the figures in this table do not include other types of organisation such as universities, trade associations, professional bodies or scientific research organisations who also publish as a secondary activity. However many such organisations, as well as some of those for whom publishing is a primary activity, provide open access to their material, which could therefore be harvested directly by the Legal Deposit Libraries. Therefore, overall, it is reasonable to take the numbers in this table as a basis for calculations, allowing a margin for error.

Using the number of print publications deposited at the British Library and ONS data in table 5 as points of reference, a weighted distribution of the number of book, newspaper or periodical publications issued by organisations of different sizes can be estimated.

Based upon a survey carried out by the Publishers Association, we estimate that the publisher's average administrative burden for depositing will typically be between £3 and £6.50 per deposit, with an initial setup cost for procedures of between £1,300 and £2000 per publisher, although there may be significant variations between individual publishers. In practice the overall burden including setup costs for those publishers who agree to participate is likely to range between £1.1m and £2.4m in the first year, £0.8m to £1.8m in year 5 s £1.3m to £3.1m per in year 10.

Table 6 Publishers Administrative Burden - transaction costs

Burden calculations in £000's		Year 1		Year 2		Year 3		Year 4		Year 5		Year 6		Year 7		Year 8		Year 9		Year 10		
		Low	High	Low	High																	
Harvesting:-																						
No of website owners giving permission		700	1200	700	1200	700	1200	700	1200	700	1200	700	1200	700	1200	700	1200	700	1200	700	1200	
No of website owners contacted		2800	4800	2800	4800	2800	4800	2800	4800	2800	4800	2800	4800	2800	4800	2800	4800	2800	4800	2800	4800	
Burden (website owners) @		£90	252	432	252	432	252	432	252	432	252	432	252	432	252	432	252	432	252	432	252	432
E-publications:-																						
Book publishers (<49 employees) ave @		£3.00	16	22	20	27	24	33	28	38	32	44	36	49	40	55	44	60	51	71	59	82
Book publishers (<49 employees) ave @		£6.50	34	48	43	60	51	71	60	83	69	95	77	107	86	119	94	131	111	155	129	179
Book publishers (50+ employees) @		£3.00	17	23	21	29	25	35	29	40	33	46	37	52	41	58	46	63	54	75	62	86
Book publishers (50+ employees) @		£6.50	36	50	45	62	54	75	63	87	72	100	81	112	90	125	99	137	117	162	135	187
Newspaper publishers (<49 employees) ave @		£3.00	10	15	13	18	16	22	18	25	21	29	24	33	26	36	29	40	34	47	39	55
Newspaper publishers (<49 employees) ave @		£6.50	23	32	28	39	34	47	40	55	45	63	51	71	57	79	62	87	74	103	85	118
Newspaper publishers (50+ employees)		£3.00	44	60	54	76	65	91	76	106	87	121	98	136	109	151	120	166	141	196	163	227
Newspaper publishers (50+ employees)		£6.50	94	131	118	164	141	196	165	229	189	262	212	295	236	327	259	360	306	426	354	491
Periodical publishers (<49 employees) ave @		£3.00	29	41	37	51	44	61	51	71	59	81	66	91	73	102	81	112	95	132	110	152
Periodical publishers (<49 employees) ave @		£6.50	63	88	79	110	95	132	111	154	127	176	143	198	159	220	174	242	206	286	238	330
Periodical publishers (50+ employees)		£3.00	57	79	71	99	86	119	100	139	114	159	129	179	143	198	157	218	186	258	214	298
Periodical publishers (50+ employees)		£6.50	124	172	155	215	186	258	217	301	248	344	278	387	309	430	340	473	402	559	464	645
TOTAL at lower unit cost			173	240	216	300	259	360	302	420	346	480	389	540	432	600	475	660	562	780	648	900
TOTAL at higher unit cost			374	520	468	650	562	780	655	910	749	1040	842	1170	936	1300	1030	1430	1217	1690	1404	1950

Table 7 Publishers Administrative Burden - Setup costs

Burden calculations in £000's		Year 1		Year 2		Year 3		Year 4		Year 5		Year 6		Year 7		Year 8		Year 9		Year 10		
		Low	High	Low	High																	
E-publications: No of publishers depositing:-																						
Book publishers (<50 employees)		223	310	56	78	56	78	56	78	56	78	56	78	56	78	56	78	112	155	112	155	
Book publishers (50+ employees)		6	8	2	2	2	2	2	2	2	2	2	2	2	2	2	2	3	4	3	4	
Newspaper publishers (<50 employees)		53	74	13	19	13	19	13	19	13	19	13	19	13	19	13	19	27	37	27	37	
Newspaper publishers (50+ employees)		4	6	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	3	2	3	
Periodical publishers (<50 employees)		228	316	57	79	57	79	57	79	57	79	57	79	57	79	57	79	114	158	114	158	
Periodical publishers (50+ employees)		14	19	3	5	3	5	3	5	3	5	3	5	3	5	3	5	7	10	7	10	
E-publications setup costs:-																						
Book publishers (<49 employees) ave @		£1,308	292	406	73	101	73	101	73	101	73	101	73	101	73	101	73	101	146	203	146	203
Book publishers (<49 employees) ave @		£1,962	438	608	110	152	110	152	110	152	110	152	110	152	110	152	110	152	219	304	219	304
Book publishers (50+ employees) @		£1,308	8	11	2	3	2	3	2	3	2	3	2	3	2	3	2	3	4	5	4	5
Book publishers (50+ employees) @		£1,962	12	16	3	4	3	4	3	4	3	4	3	4	3	4	3	4	6	8	6	8
Newspaper publishers (<49 employees) ave @		£1,308	70	97	17	24	17	24	17	24	17	24	17	24	17	24	17	24	35	49	35	49
Newspaper publishers (<49 employees) ave @		£1,962	105	146	26	36	26	36	26	36	26	36	26	36	26	36	26	36	52	73	52	73
Newspaper publishers (50+ employees)		£1,308	6	8	1	2	1	2	1	2	1	2	1	2	1	2	1	2	3	4	3	4
Newspaper publishers (50+ employees)		£1,962	8	12	2	3	2	3	2	3	2	3	2	3	2	3	2	3	4	6	4	6
Periodical publishers (<49 employees) ave @		£1,308	298	414	74	103	74	103	74	103	74	103	74	103	74	103	74	103	149	207	149	207
Periodical publishers (<49 employees) ave @		£1,962	447	621	112	155	112	155	112	155	112	155	112	155	112	155	112	155	223	310	223	310
Periodical publishers (50+ employees)		£1,308	18	25	5	6	5	6	5	6	5	6	5	6	5	6	5	6	9	13	9	13
Periodical publishers (50+ employees)		£1,962	27	38	7	9	7	9	7	9	7	9	7	9	7	9	7	9	14	19	14	19
TOTAL at lower unit cost			691	960	173	240	173	240	173	240	173	240	173	240	173	240	173	240	346	480	346	480
TOTAL at higher unit cost			1037	1440	259	360	259	360	259	360	259	360	259	360	259	360	259	360	519	720	519	720

Option 2: Wider impacts

In depositing copies of works or permitting them to be downloaded, at their own cost, and in permitting them to be made available to researchers, publishers are potentially giving up a part of their full prerogative under copyright to exploit works and benefit from investment they made by publishing them. For printed works the potential impacts, of depositing up to six copies and of their being made available to readers in the Legal Deposit Libraries, are limited; the production cost of up to six copies is relatively small when set against the sales revenue earned from hundreds or thousands of copies, as is the likelihood of sales actually being diminished by the existence of six copies being made freely available in the specified libraries.

However for digital publications, the risk could potentially be higher if there are not controls to govern precisely how they may be used. It is potentially easy and cheap to copy digital works in their entirety, and the copies are often “perfect”, i.e. undistinguishable in quality from the originals. It is also potentially very easy and cheap to disseminate such copies widely. Therefore publishers are naturally concerned to ensure that any voluntary schemes have rules governing how the works they deposit may be used, that such rules must not prejudice their interests, and that the Legal Deposit Libraries have proper controls in place to enforce these rules.

For websites and other material that the publisher makes available for open access, i.e. without restriction, most publishers are content to permit the Legal Deposit Libraries to make the archived (harvested) copies available on the same basis, provided that there is a notice or some other means of clearly identifying them as archived copies and distinguishing them from the live or updated versions on their own websites. Permissions given to the British Library and other organisations participating in the UK Web Archive have all been on this basis. However some publishers who provide open access for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications, may not wish to allow the archived copies to be made freely available on line and would not give permission on this basis. Therefore such publishers may choose not to participate in the web archive in this Option 2.

For other digital material that a publisher deposits under a voluntary scheme, especially publications which are otherwise paid for, the publisher and Legal Deposit Libraries will normally seek to put in place rules which emulate the de facto limitations of printed works:-

- The archive copies may only be used by authorised readers on the (physical) premises of the Legal Deposit Libraries—they are not to be made available remotely or on line.
- Each work may only be used by one reader at a time in each deposit library.
- The works must be secured to prevent any unauthorised copying.
- The Legal Deposit Libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

For a small number of publications which are of very high value and sold in very small volumes, even these provisions may not be sufficient to avoid prejudicing the publisher’s interests. An informal but sensible practice has therefore grown up over the years for printed works, whereby the Legal Deposit Libraries agree to embargo all access to the archived copies for a period of up to five years, so that there is no impact at all upon the publisher’s interests during the time in which the publisher might expect to benefit. These embargos are permitted at the discretion of the Legal Deposit Libraries, but have been used to avoid prejudicing a publisher’s commercial interests where the availability of even one copy that is free to read in a deposit library might be harmful to the publisher’s sales. This solution may also be used to support voluntary schemes for digitally published works.

Overall such provisions would ensure that permissions-based harvesting and voluntary deposit schemes will not have a harmful impact upon the publisher’s business nor unduly prejudice the publisher’s interests. However on rare occasions, if the publisher and deposit library do not find a compromise which will permit depositing or permitting a deposit library to harvest without also prejudicing the publisher’s interests, the voluntary scheme does not impose any obligation to deposit.

Option 3: Statutory regulation allowing libraries to harvest works directly from the internet for free content only and a voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions.

The third option is to facilitate central archiving initiatives by the Legal Deposit Libraries, through passing statutory regulation which would automatically give them permission, as an exception to copyright, to download copies of works directly from the internet for archiving purposes.

Without the need to obtain separate permission in advance from each rights holder, the Legal Deposit Libraries would be able to use more automated processes to take periodic “snapshots” of many more websites in the UK domain, to be incorporated into the archive and made available to researchers. Acquiring material under the Legal Deposit Libraries Act 2003 also offers certain other legal protections, against the risk of defamation claims in respect of archived material. It also obviates any need for the website owner or publisher to contact rights holders and respond to permission requests, thus avoiding the creation of any administrative burden.

However a limitation of this approach is that the website or on line content must be freely available i.e. published without access restrictions, before it can be captured by a deposit library’s automated harvesting system. Therefore, for all other on line content where automated harvesting is impractical or where the deposit library would need to engage with a publisher to obtain access for downloading, there would still be a need for voluntary deposit schemes, encouraging individual publishers to deposit or permit the Legal Deposit Libraries to download copies of their publications.

Option 3 therefore comprises two elements: automated harvesting under statutory regulation by the Legal Deposit Libraries wherever this is practical, but combined with voluntary schemes for other works in which publishers deposit or provide access for the Legal Deposit Libraries to download copies.

Option 3: Costs and benefits

a) Deposit library harvesting under statutory regulation

The benefits, and the costs to Legal Deposit Libraries, of adding to, maintaining and preserving the web archive using statutory regulation under the Legal Deposit Libraries Act 2003 have been modelled on the basis of assumptions about the potential size of the UK web domain, plus inferences about how harvesting activity for the UK Web Archive would change under regulation.

According to Nominet, the registrar for all .uk domains except .gov.uk and .ac.uk, over 8.5 million domains were registered in May 2010; after adjustments to subtract non-active or other out-of-scope websites and to add readily identifiable UK websites in .com and other domains, LDAP estimates that approximately 5.4 million websites are potentially in scope for harvesting as at June 2010, rising to perhaps 14.2 million by 2020, and equating to about 135 terabytes of material that could be harvested in each “snapshot” during 2010, rising to perhaps 360 terabytes in 2020. This estimate is on the basis of certain core assumptions:

- that about 35% of registered domains are unused, inactive, or “churned” every year.
- that about 2.5% of domains are protected by access restrictions
- that the weighted average size of a harvestable website, excluding much audio-visual content because it is outside the scope of the Legal Deposit Libraries Act and excluding all content published with access restrictions, is approximately 25 megabytes (varying between less than 5 megabytes for 80% of websites up to over a gigabyte per site for the top 0.5%)

Removing the need to obtain prior copyright permission from each rights holder means that a domain-wide snapshot of all the websites in scope becomes a practical possibility. Some curatorial selection activity would still continue, in order to identify sites of special interest which would benefit from additional quality controls and quality assurance in the harvesting process, or to choose sites and content about selected events or themes, to form additional special collections within the overall archive.

In contrast with the permissions-based harvesting in Option 2, this option allows for a much more comprehensive web archive. Therefore the volume of material collected can be much greater, with significant economies of scale in the collecting process. Overall the total costs of website archiving in the Legal Deposit Libraries would be approximately double those in Option 2, but the volume of material

collected could be hundreds if not thousands of times greater, and would be a much more complete and useful record of the nation's digitally published heritage.

Overall, the Legal Deposit Libraries' costs for supporting this activity are estimated as follows:

Table 8: Cost of deposit library harvesting under statutory regulation, in Option 3

Costs of selecting websites for additional QA or special themed collections.	£0.2m-£0.3m per annum
Costs of harvesting and quality-assuring websites on average one to two times p.a., with metadata and discovery tools.	£0.3m-£0.5m in Yr1, rising to circa £0.4m-£0.6m p.a. by Yr 10
Annual costs of storage, preservation and ongoing technical support for the archived websites (estimated 100 terabytes in Year 1, rising to 5 petabytes by Year 10)	£0.4m-£0.5m in Yr1, rising to circa £0.8m-£1.1m per annum from Yr5 onwards
TOTAL (but excluding set-up costs and allocated costs of maintaining access environment, security etc)	£0.9m-£1.3m in Yr1, rising to circa £1.4m-£1.9m per annum by Yr10

This equates on average to between approximately £280 and £380 per annum for each terabyte of data archived over a ten-year period, and each archived snapshot could potentially include up to 100% of the UK websites in scope.

The benefits of this activity will be received mainly by researchers and future generations, being able to use the archive as a resource, and by the nation in safeguarding a part of its digital heritage. The Legal Deposit Libraries estimate that a regulation for harvesting by Legal Deposit Libraries will facilitate the creation of an archive of material that is published without access restrictions.

b) Voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions

However in Option 3 the regulation is limited in its effect and would not cover any material that is published with access restrictions. Therefore the regulation would exclude almost all professionally published works which are paid for, or which require a subscriber login or some other form of registration, password or access mechanism. Thus a vital part of the UK's digitally published heritage i.e. that which is of most obvious and immediate benefit in scholarly research, would still not be covered adequately by the regulation.

Archiving and preserving such material would still require the same kind of voluntary deposit schemes and arrangements that were described under option 2, with the same upper limit on benefits. These numbers are the same as option 2:

- In Year 1, up to approximately 60,000 publications (monographs and serial parts) would be deposited, processed and archived
- By Year 4, approximately 100,000 to 140,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 18% to 26% of those eligible for deposit)
- By Year 10, approximately 210,000 to 300,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 40% to 55% of those eligible for deposit).

Taking these considerations into account, the following deposit library costs are estimated (these are the same as in option 2).

Table 9: Cost of voluntary deposit schemes under Option 3

Acquisition costs (promoting deposit schemes and negotiating voluntary agreements with individual publishers)	£0.3m-£0.4m per annum
Ingest costs, including processing metadata to make the content discoverable and accessible for researchers.	£0.3m-£0.5m in Year 1, rising to £0.7m-£0.9m p.a. by Year 10
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.6m-£0.8m in Year 1, rising to £0.9 to £1.3m p.a. by Year 10

Option 3: Risks and assumptions

a) Risk of Loss — It is assumed that regulation will permit the Legal Deposit Libraries to harvest, limited only by available resources and technology. Therefore, up to 100% of freely available websites and open access material could be collected by harvesting, but only via periodic “snapshots”; the frequency of snapshots may vary by website but an overall average of once to twice per annum has been assumed for this Impact Assessment. Therefore any material which is published but then removed from the website before the next snapshot may still be lost. Furthermore, by year 10, only 40% to 55% of other individual publications made available each year would be archived through voluntary schemes.

Therefore most of the remaining 45% to 60% of other individual publications risk being lost forever. Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through Section 8, copyright and database rights are not infringed by the Legal Deposit Libraries harvesting copies from the internet and through Section 10 the Legal Deposit Libraries (or publishers), subject to certain conditions, are “...not liable in damages, or subject to any criminal liability, for defamation...” in respect of using deposited copies.

Therefore, for material harvested through regulation, these clauses in the Act mitigate most of the legal risks described under Option 2, and this is a significant benefit. However, those risks still remain undiminished for the remaining material that would be collected or deposited under voluntary schemes:

b) Copyright Risk — The publisher who deposits or permits a deposit library to download material that cannot be harvested under regulation may risk a claim for infringement of copyright for one or more reasons:

- The publisher, although attempting to clear rights before depositing or giving permission, may be unable to identify or contact some rights holders; evidence of attempts to do so might help defend against a claim, but the publisher would nevertheless incur costs in dealing with it.
- For on line publications which include content from multiple contributors, such as some magazines or newspapers, the publisher may clear rights at a point in time but then fail to monitor and update the rights as content is updated and new content is added.

The Legal Deposit Libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works.

- Content delivered by a publisher is normally deposited without any confirmation or clarification about the associated rights for using it, and the library must simply rely upon the terms of the voluntary scheme. For reasons of long-term preservation and continuing access, Legal Deposit Libraries usually need to make additional copies or “format shift” the content, and providing on line access to it might be considered a form of republishing; although these uses may be made clear in the terms of the scheme, they may not be sufficient to defend the claims of a third party rights holder who was not made aware of the deposit and who did not give specific permission.
- The permission to download given by a publisher may not cover all of the content they make available through the internet; if this is not clear, a deposit library might inadvertently download and archive some content without appropriate authority.
- A court might find that Legal Deposit Libraries cannot rely upon the permissions given by a publisher.

c) Defamation Risk — As described under Option 2, a person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. Although this risk is mitigated by the Act for material harvested under regulation, it remains undiminished for material deposited under voluntary schemes. The Legal Deposit Libraries will put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. However, such procedures would typically depend upon their being made aware of the defamation by the original publisher, who might also therefore bear some responsibility if there is any failure in communications.

Option 3: Administrative burden calculations

The administrative burden for Legal Deposit Libraries has already been included within the costs above. This section considers the administrative burden for publishers in dealing with requests from the Legal Deposit Libraries and in depositing works or arranging permission for harvesting.

a) Deposit library harvesting under statutory regulation

Because regulation would permit the application of Section 8 of the Act, through which material copied by a deposit library from the internet does not infringe copyright or database rights, there is no longer any need for the deposit library to contact the website owner in advance for permission. Nor is there any need for a publisher or website owner to put procedures in place to monitor rights and permissions status specifically for deposit purposes.

It is the custom of some website owners and publishers to use robots.txt, ACAP or other conventions and protocols to inform the automated harvesting tools used by web search companies and other organisations about any pages or files that they wish to prevent being indexed. Therefore some website owners or publishers may wish to amend their robots.txt or ACAP files with regard to the Legal Deposit Libraries, in order to reflect the effect of regulation in giving a special dispensation for archiving; they might see this as an administrative burden. However in fact it is not necessary for a publisher to take any action; statutory regulation would effectively give the Legal Deposit Libraries copyright permission to copy material whether or not the publisher has such tools in place, and their doing so does not otherwise affect or detract from the publisher's use of such tools. Legal Deposit Libraries will use standard automated protocols in order to inform the website manager (via a "user-agent string" submitted to the web server's log of server requests) on each occasion that a copy of their content is harvested for legal deposit purposes; the website owner may choose whether or not to use this information, but there will be no requirement for a website owner to make any change to their robots.txt files, nor take any other action.

Regulation would also permit the application of Section 10 of the Act, with its legal comfort against defamation, effectively eliminating any need for a publisher to monitor and advise a deposit library of any defamatory material contained on their website.

So, for material harvested by a deposit library through regulation, the administrative burden for publishers is effectively £ Nil.

b) Voluntary deposit schemes

However an administrative burden for publishers does remain in respect of depositing under a voluntary scheme. As described under Option 2, this burden essentially comprises three main elements:

1. administration in dealing with the original request and/or decision to participate in the voluntary scheme, including perhaps an assessment of the risks and benefits to the publisher.
2. administration, and perhaps technical support, to set up a depositing mechanism and process with the Legal Deposit Libraries for delivering material or permitting access to download.
3. the transactional costs of each individual deposit or delivery.

The same calculation as described under Option 2 has been made, using the same base figures for estimating the number of publications and publishers in each category. That is:

- the number of digital publications which are potentially eligible for deposit has been estimated by reference to print, taking the average number of legal deposit deliveries to the BL of (printed) monographs, newspaper issues and serial issues each year during 2006/07 to 2008/09 as a baseline
- the number of publishing organisations, broken down by number of employees and by type of publication (books, newspapers and other periodicals) has been based upon information produced by the Office for National Statistics and shown in Table 5.

Again, we estimate that the average administrative burden for publishers of depositing will typically be between £3 and £6.50 per deposit, with an initial setup cost for procedures of between £1,300 and £2000 per publisher. Voluntary schemes would necessitate a gradual implementation scaling up over a

period of years, and the experience from existing pilots suggests that the number of deposits is never likely to exceed 50%-60% of publications from 20%-30% of publishers. Therefore, in practice, the overall burden including setup costs for those publishers who agree to participate is likely to total less than £3m for the first 2 years, will range between £0.4m and £1.8m per annum in each of the next six years, and only reach as much as £0.7m to £2.7m per annum in years 9 and 10 as the final phase of implementation is completed. The final administrative burden in subsequent years, once a “steady state” of depositing has been achieved, is likely to be between £0.6m and £1.9m per annum.

Option 3: Wider impacts

As described under Option 2, in depositing copies of works or permitting them to be downloaded, at their own cost, and in permitting them to be made available to researchers, publishers are potentially giving up a part of their full prerogative under copyright to exploit works and benefit from investment they made by publishing them.

For websites and other material that the publisher makes available for open access, i.e. without restriction, although many if not a majority of publishers are content to permit the Legal Deposit Libraries to make the archived (harvested) copies available on the same basis, some publishers who provide open access for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications, would not. This is because making archived copies openly available on the same basis as the publisher’s own offering might potentially cause users of the publisher’s website to use the archived copies instead, causing a loss of web traffic to the publisher’s website.

Therefore all material archived through regulation may only be used in ways that are permitted by the Act and through regulations. An important limitation built into the 2003 Act, by virtue of its definition of a reader in Section 7, is that archived copies may only be used by authorised readers on the (physical) premises of the Legal Deposit Libraries—they may not be made available remotely or on line. Access, to the same relevant material, for non-print deposit content would be restricted to one viewing terminal at any one time in each of the Legal Deposit Libraries. This mirrors the approach for books where a maximum of only 6 copies of a work are available for simultaneous reading, for digital content. This limitation effectively avoids any real risk of prejudicing such commercial models in which advertising revenue or other benefits depend upon many thousands or even millions of users visiting the publisher’s website and viewing their material.

For other digital material that a publisher deposits under a voluntary scheme, typically publications that are sold or paid for by subscriptions, the publisher and Legal Deposit Libraries will normally seek to put in place rules which emulate the de facto limitations of printed works:-

- Again, the archive copies may only be used by authorised readers on the (physical) premises of the Legal Deposit Libraries and may not be made available remotely or on line.
- Each work may only be used at one terminal at a time in each deposit library.
- The works must be secured to prevent any unauthorised copying.
- The Legal Deposit Libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

As in Option 2, for the small number of publications which are of very high value and sold in very small volumes, temporary access embargoes may be permitted, to avoid prejudicing a publisher’s commercial interests where the availability of even one copy that is free to read in a deposit library might be harmful to the publisher’s sales. However on rare occasions, if the publisher and deposit library do not find a compromise which will permit depositing or permitting a deposit library to harvest without also prejudicing the publisher’s interests, there is no obligation to deposit as this scheme only covers voluntary deposits.

Overall, the restriction to users on library premises for archive copies of open access material harvested under regulation, and the additional provisions under voluntary deposit schemes for other material, all go to ensure that depositing will not have a harmful impact upon the publisher’s business nor unduly prejudice the publisher’s interests.

Option 4: Statutory regulation, allowing for web harvesting of freely available on line content and, upon request, publisher delivery of access-restricted on line content.

The fourth option is to make regulations which both facilitate harvesting by the Legal Deposit Libraries and also imposes an obligation upon a publisher to work with the Legal Deposit Libraries in ensuring that other material is archived.

As described under Option 3, under regulation the Legal Deposit Libraries would be able to use more automated processes to take periodic “snapshots” of websites in the UK domain, to be incorporated into the archive and made available to researchers.

For content which cannot be harvested in this way because it is not freely available but published with access restrictions, or where archived “snapshots” would not be sufficient as a record of the digital heritage, a formal deposit process is also proposed:

- Deposit of such publications will be required upon request to individual publishers by the Legal Deposit Libraries. Legal Deposit Libraries and publishers will negotiate and agree what is to be deposited and an appropriate delivery method.
- The six Legal Deposit Libraries will share or distribute publications to each other so that a publisher need only deposit via a single channel.
- Publications will be made available to readers for access for reading and copying (print only) within constraints established by the Act and secondary regulation, and within a digital environment where Legal Deposit Libraries are able to enforce these constraints.
- Separately, representatives from the Legal Deposit Libraries and the publishing industry will consider guidelines to underpin various aspects of achieving legal deposit, as well as draw up and publish related guidance notes and supporting information.

The regulations would impose an obligation on each publisher to deposit, or permit access to a harvester to download, copies of digitally published material with the Legal Deposit Libraries, when asked to do so by a deposit library. But the regulations would also allow flexibility for both publisher and library to determine the most effective and cost-efficient way of doing so.

The regulations would also set out how deposited material may be used, but without being drafted so narrowly as to render them inoperable for new types of publication that are still being developed. It is expected that the Legal Deposit Libraries will formulate progressive requesting policies. In practice it is expected that, alongside the regulations, the Legal Deposit Libraries will also put in place a management structure. This will include a collections policy, taking advice from publishers and other stakeholders, to ensure that, in the wide range of different circumstances potentially affecting electronic publishing and the deposit and preservation of digital heritage, the principles and rules set out in regulation will be interpreted and applied in an appropriate way.

The need to secure the cultural heritage of a nation as reflected by its on line presence is recognised and being addressed by a number of countries. The full list of countries can be seen at table 13 at the end of this section. With such a high number of countries across Europe and the rest of the world building and maintaining such an archive of both on line and off line deposits it is important that the UK keeps pace to ensure that its digital heritage is being preserved and that there is an effective UK source for such material.

Option 4: Costs and benefits

a) Deposit library harvesting under statutory regulation

As for Option 3 the benefits, and the costs to Legal Deposit Libraries, of adding to, maintaining and preserving the web archive using statutory regulation under the Legal Deposit Libraries Act 2003 have been modelled on the basis of assumptions about the potential size of the UK web domain, plus inferences about how harvesting activity for the UK Web Archive would change under regulation. Removing the need to obtain prior copyright permission from each rights holder means that a domain-wide snapshot of all the websites in scope becomes a practical possibility. Some curatorial selection activity would still continue, in order to identify sites of special interest which would benefit from additional quality controls and quality assurance in the harvesting process, or to choose sites and

content about selected events or themes, to form additional special collections within the overall archive. But, in contrast with the permissions-based harvesting in Option 2, regulation allows for a much more comprehensive web archive, with periodic snapshots of virtually the whole UK domain. Therefore the volume of material collected can be much greater, with significant economies of scale in the collecting process.

Overall the total costs of website archiving in the Legal Deposit Libraries would be the same as in Option 3, that is approximately double those in Option 2 but enabling a much more complete and useful record of the nation's digitally published heritage of open access material, published without access restrictions.

Table 10: Cost of deposit library harvesting under statutory regulation, in Option 4

Costs of selecting websites for additional QA or special themed collections.	£0.2m-£0.3m per annum
Costs of harvesting and quality-assuring websites on average one to two times p.a., with metadata and discovery tools.	£0.3m-£0.5m in Yr1, rising to circa £0.4m-£0.6m p.a. by Yr 10
Annual costs of storage, preservation and ongoing technical support for the archived websites (estimated 100 terabytes in Year 1, rising to 5 petabytes by Year 10)	£0.4m-£0.5m in Yr1, rising to circa £0.8m-£1.1m per annum from Yr5 onwards
TOTAL (but excluding set-up costs and allocated costs of maintaining access environment, security etc)	£0.9m-£1.11.3m in Yr1, rising to circa £1.4m-£1.9m per annum by Yr10

This equates on average to between approximately £280 and £380 per annum for each terabyte of data archived over a ten-year period, and each archived snapshot could potentially include up to 100% of the UK websites in scope.

The benefits of this activity will be received mainly by researchers and future generations, being able to use the archive as a resource, and by the nation in safeguarding a part of its digital heritage. The Legal Deposit Libraries estimate that a regulation for harvesting by Legal Deposit Libraries will facilitate the creation of a more comprehensive and also a more carefully selected archive of material that is published without access restrictions.

b) Request-based delivery of other works under statutory regulation

As described above, for many works, it is not technically possible for Legal Deposit Libraries to download copies directly from the internet without the publisher providing the means to bypass a pay wall or access barrier. In some such cases both publisher and deposit library would prefer the publisher to deliver works to the library in discrete information packages rather than allow the deposit library to bypass normal website security and download the content directly, although both must also be available as an option for other cases.

At a high level, LDAP has advised that Legal Deposit Libraries will need to support six main deposit methodologies, in addition to the seventh covering library harvesting for the web archive. These are illustrated in table 3 above. The diversity of publishers and publication formats requires regulations that are flexible enough to allow for a wide range of delivery options and other circumstances specific to individual publishers

The need for Legal Deposit Libraries to develop systems and processes that are flexible enough to cater for all seven of these broad methodologies, plus the fact that in practice most publishers will have unique variances within these broad methodologies, means that Legal Deposit Libraries can negotiate with publishers on the best way, for both parties, for publications to be deposited. Otherwise it would be an unreasonable burden for Legal Deposit Libraries to provide for an almost infinite number of delivery processes and preservation requirements. Implementation of any deposit scheme must also be phased in gradually over a period of years.

Therefore a more collaborative 'partnership' approach between each publisher and library is proposed for such publications, and is practicable because of the much smaller number of publishers involved in comparison with harvesting all websites in the UK domain:

- A publisher will only be required to deposit when specifically asked to do so by means of a formal notice issued by a deposit library or its appointed representative.
- Notices will be on a publisher-by-publisher basis, applying to all relevant on line publications that are made available on or after the date of the notice (or perhaps, if mutually agreed by the publisher and the Legal Deposit Libraries, to a defined sub-set of the publisher's output).
- The notice will allow a reasonable period of time, not to exceed 6 months, for the publisher to commence depositing electronically. Separate guidelines will indicate how the publisher and the legal deposit library may discuss and agree precisely what should be deposited and when, as well as an appropriate delivery method.

Although implementation will be gradual, probably taking up to ten years or so before a copy of all eligible publications being produced each year is also being archived, regulation will permit a much more comprehensive collection to be developed more quickly. The Legal Deposit Libraries estimate that:

- In Year 1, up to approximately 160,000 publications (monographs and serial parts) could be deposited, processed and archived (100,000 more than option 2 and 3).
- By Year 4, approximately 200,000 to 280,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 30% to 50% of those eligible for deposit (100,000 and 140,000 more than option 2 and 3)
- By Year 10, approximately 430,000 to 600,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 75% to 100% of those eligible for deposit. (220,000 and 300,00 more than option 2 and 3)

Taking these considerations into account, the following deposit library costs are estimated for notification-based deposit under statutory regulation.

Table 11: Costs of operating request-based deposit for other works under statutory regulation in Option 4

Acquisition costs (issuing requests and setting up deposit delivery arrangements with individual publishers)	£0.3m-£0.4m per annum
Ingest costs, including processing metadata to make the content discoverable and accessible for researchers.	£0.5m-£0.7m in Yr 1, rising to circa £0.8m-£1.1m p.a. from Yr 4 onwards
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.8m-£1.1m in Yr 1, rising to circa £1.0m-£1.4m p.a. from Yr 4 onwards

The main benefits of this activity will be received by researchers and future generations, being able to use the archive as a resource, and by the nation in safeguarding a part of its digital heritage. Regulation will permit the creation and preservation of an archive of digitally published works.

An important additional benefit of Option 4 is that, as each publisher implements electronic deposit, if they publish the same work in both print and non-print the draft Regulations provide that they may agree whether the print or non-print work should be deposited; electronic deposit will not be an additional obligation for such works.

Although some works may continue to be published only in printed form, and must therefore continue to be deposited as physical objects, the trend is towards publishing digital versions as well as, or sometimes instead of, printed works. Over time, therefore, the number of printed books, papers and periodicals being deposited should reduce, as each publisher by agreement with the Legal Deposit Libraries begins to deposit the electronic versions instead.

In the short term, as the technical infrastructure and new processes for digital works are being developed alongside existing processes for printed items, dealing with electronic deposit will be an additional cost for the Legal Deposit Libraries. However, in the medium to longer term, this gradual reduction in print deposits will permit savings to offset the costs of electronic deposit:

- It will become possible to reallocate resources currently involved with print deposit to electronic deposit, as the former reduces and the latter increases.

- Digital works will be deposited once, into a shared technical infrastructure for all of the Legal Deposit Libraries instead of up to six printed copies all being processed, managed and preserved separately.
- The rate of growth for shelf storage in optimised preservation conditions (e.g. controlled for temperature and humidity) will slow, reducing future capital expenditure requirements.
- Delivering deposited copies to readers for their use will become a much more efficient and timely process, potentially saving many of the handling costs associated with physical objects.

This potential benefit must be enabled by formal regulation under the Legal Deposit Libraries Act 2003, allowing the transfer of the publisher's deposit obligation from the printed to the digital version of such publications. Therefore it can only be realised as an outcome under Option 4 in which such regulation is proposed.

Option 4: Risks and assumptions

a) Risk of Loss — Regulation will permit the Legal Deposit Libraries to harvest and collect other access-restricted works more comprehensively, limited only by the availability of resources and suitable technology. Therefore, only material which is published but not collected during the period of implementation (scaling up over 10 years) or material which is published but then removed from a publisher's website before the next snapshot may still be lost. Overall, although there remains a small risk of losing some material, this risk is largely eliminated for most of the United Kingdom's digitally published heritage.

b) Copyright Risk — Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through section 8, copyright and database rights are not infringed by the Legal Deposit Libraries harvesting copies from the internet, and through section 9 the publisher is also protected against infringement of copyright, publication right or database rights, and against any claim for breach of contract, in respect of deposited copies. Therefore this risk is also mitigated or eliminated for both the Legal Deposit Libraries and publisher.

c) Defamation Risk — As described under Options 2 and 3, a person who has been defamed in archived material may seek to claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. The Legal Deposit Libraries will still put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. Also the original publisher who deposits material should theoretically inform the Legal Deposit Libraries of any such claims. But the operation of section 10 of the Act dramatically reduces the risk of liability for any defamation claims in respect of the archived copies.

Option 4: Administrative burden calculations

The administrative burden for Legal Deposit Libraries has already been included within the costs above. This section considers the administrative burden for publishers in dealing with requests from the Legal Deposit Libraries and in depositing works or arranging permission for harvesting.

a) Deposit library harvesting under statutory regulation

As in Option 3, regulation would permit the application of section 8 of the 2003 Act, through which material copied by a deposit library from the internet does not infringe copyright or database rights. Therefore there is no longer any need for the deposit library to contact the website owner in advance for permission. Nor is there any need for a publisher or website owner to put procedures in place to monitor rights and permissions status specifically for deposit purposes.

It is the custom of some website owners and publishers to use robots.txt, ACAP or other conventions and protocols to inform the automated harvesting tools used by web search companies and other organisations about any pages or files that they wish to prevent being indexed. Therefore some website owners or publishers may wish to amend their robots.txt or ACAP files with regard to the Legal Deposit Libraries, in order to reflect the effect of regulation in giving a special dispensation for archiving; they might see this as an administrative burden. However, Legal Deposit Libraries will use standard automated protocols in order to inform the website manager (via a "user-agent string" submitted to the web server's log of server requests) on each occasion that a copy of their content is harvested for legal

deposit purposes; the website owner may choose whether or not to use this information, but there will be no requirement for a website owner to make any change to their robots.txt files, nor take any other action.

Regulation would also permit the application of section 10 of the 2003 Act, with its legal comfort against defamation, effectively eliminating any need for a publisher to monitor and advise a deposit library of any defamatory material contained on their website.

So, for material harvested by a deposit library through regulation, the administrative burden for publishers is effectively £ Nil.

b) Notification-based delivery of other works under statutory regulation

The administrative burden for publishers in depositing, or permitting access for the Legal Deposit Libraries to download, copies of other electronically copied works is similar to that in Options 2 and 3; the total burden is only higher in Option 4 because more publishers comply with statutory regulation than deposit under voluntary schemes, due to its added legal protections against copyright infringement and defamation problems. However, in Option 4 and 5, for many publishers the administrative burden of depositing electronically will be more than offset by savings in, or the complete elimination of, their administrative burden of depositing printed publications.

As described earlier, the burden in depositing electronically comprises three main elements:

1. Administration in dealing with the original request from the Legal Deposit Libraries. This should be marginally less than the equivalent element under options 2 and 3 because the statutory obligation makes it unnecessary to assess risks and benefits before making a business decision about participating. However no such reduction has been assumed for the purpose of this Impact Assessment.
2. Administration, and perhaps technical support, to set up a depositing mechanism and process with the Legal Deposit Libraries for delivering material or permitting access to download.
3. The transactional costs of each individual deposit or delivery.

On the basis of these assumptions, and findings from a survey by the Publishers Association, we estimate that the average administrative burden for publishers of depositing will typically be between £3 and £6.50 per deposit, with an initial setup cost for procedures of between £1,300 and £2000 per publisher.

The same calculation as described under Options 2 and 3 has been made, using the same base figures for estimating the number of publications and publishers in each category. That is:

- the number of digital publications which are potentially eligible for deposit has been estimated by reference to print, taking the average number of legal deposit deliveries to the BL of (printed) monographs, newspaper issues and serial issues each year during 2006/07 to 2008/09 as a baseline
- the number of publishing organisations, broken down by number of employees and by type of publication (books, newspapers and other periodicals) has been based upon information produced by the Office for National Statistics and shown in Table 5
- However in Option 4 it is assumed that more publishers will begin depositing and the number of publications deposited will be significantly greater, with a more rapid scaling up over the period.
- In Year 1, up to approximately 160,000 publications (monographs and serial parts) could be deposited, processed and archived, from perhaps 20% of publishers
- By Year 4, approximately 200,000 to 280,000 monographs and serial parts per annum issued by perhaps 25%-40% of publishers would be deposited, processed and archived, representing about 30% to 50% of those works that are eligible for deposit
- By Year 10, approximately 430,000 to 600,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 75% to 100% of those eligible for deposit, from 75%-100% of publishers.

On this basis we estimate that the overall burden for notification-based deposit is likely to start in the first year at between £0.3m and £1.0m for the transaction costs, gradually increasing each year at a relatively

constant rate as more publications are deposited. In year 4 the transaction costs would be between £0.6m and £1.8m and in year 10 they should reach a “steady state” of between £1.3m and 3.9m per annum.

Publishers’ setup costs will vary each year, depending upon how many are requested by notification to begin depositing, but we estimate that the total of publishers’ setup costs over the whole of the next ten years will be between £5.2m and £10.8m.

Therefore the total administrative burden for publishers over the entire ten-year period of electronic deposit is likely to be between £12.8m and £33.7m

However, in Option 4, it is also likely that this administrative burden for electronic deposit will be more than offset by savings in the total administrative burden for print deposit. As each publisher implements electronic deposit, their deposit obligation for works which are published in both print and digital media will transfer from the printed version to the digital version. Over time, therefore, the number of printed books, papers and periodicals being deposited should reduce, as each publisher by agreement with the Legal Deposit Libraries begins to deposit the electronic versions instead. By Year 10, publishers’ print deposit obligation might be almost completely eliminated except for a relatively small number of works that continue to be published only in printed form, and must therefore continue to be deposited as physical objects.

Benefits to main affected groups

We believe that there are benefits for both publishers and libraries under this option.

The benefits to libraries mainly relate to being able to harvest systematically producing a single on line archive and the potential savings that can be made from no longer needing to process a proportion of print deposits.

With regard to the benefits to publishers the new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of publications and therefore will make savings and so accrue benefits from this option. However we recognise that monetising these benefits is not easy and while we have provided some estimates below we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies and therefore the amount they will save in future under this option.

Monetising benefits to publishers

In 2005 an estimate was made of the admin burden placed on publishers of hard-copy legal deposit which was in the region of £53m. However we recognise that this was not an accurate figure. This figure, produced by PWC, was part of a wider exercise to give an indication of the costs that Government places on businesses, not to produce statistically accurate data for each regulation. The Standard Cost Model was used, which works on a relatively simple methodology, by measuring the cost (in terms of the time it takes to complete and any external costs) of completing one transaction and then multiplying it by the number of times it happens. These costs were established through interviews with publishers. It is not clear if these figures include the cost of the publications themselves. Therefore, these are not accurate costs, but rather are indicative of the burden placed on business by the regulation.

However we do know that the regulations will lessen the admin burden and therefore have attempted a benefit calculation to monetise these savings and produce indicative benefits.

Assumptions

As noted above, the £53m was an indicative cost of hard-copy deposit. We believe it tended to overestimate the true administrative burden and therefore, for the purpose of calculating savings as a benefit, we have adopted a very cautious approach and assumed just £10.6m (i.e. 20% of £53m) as the

cost of hard-copy deposit; a conservative assumption is supported by the results of a brief survey undertaken in July by DCMS which also indicated that £53m is likely to be too high.¹²

To calculate the saving, £10.6m must be divided by the number of printed book titles, newspaper editions and serial issues that are published in the UK each year. This averages 537,096 per annum, based upon statistics for three years of legal deposit receipts as reported by the British Library. Therefore the administrative burden for depositing up to six copies of a printed publication is £19.74. This compares with a cost of between £3.00 and £6.50 (plus setup) for depositing one copy—which the legal deposit libraries would then share—of the same publication in non-print form.

We have then made three further assumptions to calculate the overall year-on-year savings:

- Firstly we assume a one-year lag before realising any saving, because of the need for a period of transition and testing to ensure that the electronic system is working properly before deliveries of the printed copies can stop.
- Secondly we conservatively assume that only 50% of the total universes of printed publications are also published in non-print form. Savings would not be realised for the other 50%, because the Act requires that the hard copies must continue to be deposited.¹³

Using these assumptions, the total gross saving (with a one-year lag) is estimated to be £1.1m-£1.6m in Yr2, rising to £3.7m-£5.1m in Yr10, to be offset against the cost of depositing electronically.

Therefore there is a benefit to publishers which can be seen by comparing the savings to publishers calculated above with the costs to publishers. The table below sets this out:

Table 12 – Cost and Benefits

Costs (£m)	Total Cost (NPV)	..of which to Publishers	...of which to Libraries
Low	44.4 (36.7)	12.8 (10.5)	31.6 (26.2)
High	77.5 (63.8)	33.7 (27.4)	43.8 (36.4)
Best Estimate	60.9 (50.2)	23.2 (18.9)	37.7 (31.3)
Benefits (£m)	Total Benefit (NPV)	...of which to Publishers	...of which to Libraries
Low	20.7 (16.4)	(all)	-
High	28.8 (22.8)	(all)	-
Best Estimate	24.8 (19.6)	(all)	-

Benefits to research and scholarship

A general benefit of extending legal deposit to non-print includes the availability and continued maintenance of a national and accessible archive of UK published materials for humanistic, social, economic and scientific research, for use by the academic community, by business and industry, by the professions, by government and by private individuals. Users benefit from a geographically distributed national published archive of national and international importance on multiple sites, saving time, costs of travel and subsistence.

Benefits to the UK

Extension of legal deposit will allow for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This in turn will benefit communities in the UK of key

¹² Because of a number of methodological issues e.g. including sample size, the results of this survey were not used, however the results indicated that the cost per item would be much lower than the assumptions used here.

¹³ While this is an assumption a recent survey conducted by DCMS with a small number of publishers showed that this could on average be much higher, we have maintained an assumption of 50% to take a more cautious approach.

importance for its future well-being and prosperity: researchers and educators; wealth creators in current and emerging sectors of business and industry; and the scientific community. The nation also benefits from the international renown of the BL and the LDLs and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them.

Option 4: Wider impacts

As described in Options 2 and 3, by depositing copies of works or permitting them to be downloaded, at their own cost, and by permitting them to be made available to researchers, publishers are potentially giving up a part of their full prerogative under copyright to exploit works and benefit from the investment they made in publishing them.

For websites and other material that the publisher makes available for open access, i.e. without restriction, many if not most publishers might be content to permit the Legal Deposit Libraries to make the archived (harvested) copies available on the same basis. However some publishers provide open access to their content for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications. Allowing open and unrestricted access to archived copies of their material might cause a loss of web traffic to the publishers' own websites, unduly prejudicing their legitimate commercial interests.

Therefore all material archived through regulation may only be used in ways that are permitted by the 2003 Act and through regulations. An important limitation built into the 2003 Act, by virtue of its definition of a reader in section 7, is that archived copies may only be used by authorised readers on the (physical) premises of the Legal Deposit Libraries—they not be made available remotely or on line. Furthermore, regulation will put in place rules which emulate the de facto limitations in use of printed works:-

- Archived copies may only be used by authorised readers on the (physical) premises of the Legal Deposit Libraries and may not be made available remotely or on line.
- Each deposited work may only be used at one terminal at a time in each deposit library.
- The works must be secured to prevent any unauthorised copying.
- The Legal Deposit Libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

As in Options 2 and 3, for the small number of publications which are of very high value and sold in very small volumes, temporary access embargos may be permitted, to avoid prejudicing a publisher's commercial interests where the availability of even one copy that is free to read in a deposit library might be harmful to the publisher's sales. For any rare occasion in which a dispute arises between the publisher and Legal Deposit Libraries about whether such an embargo is appropriate or about the period of embargo, enforcement will be in accordance with section 3 of the Legal Deposit Libraries Act 2003. Overall, the rules for access laid down in regulation, together with embargos will all ensure that legal deposit does not have any harmful impact upon the publisher's business nor unduly prejudice the publisher's interests.

Small Firms Impact Assessment

The structure of the publishing industry shows that there are varying sizes of businesses and by looking at the organisations registered for VAT within the ONS' UK Business: Activity Size & Location report we can identify publishing organisations. The table below indicates the range of business sizes and the number of small or micro businesses (those with 50 or less employees) accounts for 5004 of the total number. Therefore we recognise that there will be an impact on small businesses from the proposed regulations.

Table 13: Number of publishing organisations

	Book Publishers	Newspaper Publishers	Periodical Publishers	TOTAL
Micro (1 to 9)	2,212	387	1,747	4,346
< 20 (10 to 19)	125	28	227	380
Small (20 to 49)	78	27	173	278
Medium (50 to 250)	50	12	93	155
Large (250+)	15	23	37	75
Total	2,480	477	2,277	5,234

The 2003 Act states that any regulations should not pose a significant burden to publishing organisations and we have therefore ensured that any regulations do not do this. The regulations will look to LDLs to set up effective co-ordination for requests of deposits and they will work with publishing organisations to make sure that there is no duplication of requests and therefore no undue burdens are placed on these organisations. In particular for small firms we have accounted for them in our calculations. We have identified the costs for firms with less than 50 employees across newspapers, periodicals and book publishers to ensure we are identifying the different costs for small firms – both in terms of administrative burden and transition costs.

For on line publications for which there is a charge or which are subject to public access restrictions publishers must deposit these works within three months of a written request from a Legal Deposit Library unless the request specifies delivery within a period exceeding three months but no more than six months from receipt of the written request. We have allowed for the initial period to deposit to be negotiated to as long as six months in order to allow the publisher (particularly a small publisher) time to make any necessary technical set up changes to facilitate deposit.

The obligation only applies in relation to the first Legal Deposit Library to make a request so the obligation only applies once, again recognising the need not to place too much burden on publishers, especially small publishers.

The Government ran a consultation on draft Regulations for non-print legal deposit between 30 September 2010 and 11 January 2011. In the consultation we asked respondents to provide information about costs to publishers and for depositing non-harvestable content. This option included the need to deposit complex information such as databases and streamed content at the publisher's costs. The evidenced gathered from the consultation showed these costs could be significant higher than estimated. In light of the overall responses to the consultation, there was not sufficient evidence to show that the Regulations do not impose a disproportionate burden to publishers to deposit non-harvestable content. We have therefore done no further work on exploring this option.

Micro business exemption

Micro-business are not exempt from this regulation as a majority (over 80%, see table 13) of publishers are micro-businesses and therefore any exemption would make regulations ineffective.

Option 5 Statutory regulation, allowing for web harvesting of both freely available and access-restricted on line content with, in addition, delivery of content by agreement if publishers prefer.

Deposit libraries will request and collect freely available and access-restricted on line work (which is within scope of the 2003 Act) by means of web harvesting software. Where the content is freely available the web harvester will simply visit the website and collect the content. Where the content is subject to an access restriction, the request by the web harvester to the login page will be deemed to be a request for the content behind that login page. The publisher will have 14 days prior notice to provide login details to the deposit library to allow for the delivery of the access-restricted content. If the publisher does not provide login details to allow for delivery, the publisher will be in breach of the obligation under the 2003 Act to deliver and will be subject to the enforcement provisions regarding delivery in the 2003 Act.

Any works that cannot be deposited using the web harvester do not fall under this proposal, unless a publisher agrees to deposit in another way. Therefore, the only active obligations on publishers are to provide access details for works behind pay walls or registration walls.

Therefore Option 5 does not impose the requirement on publishers, but provides legal cover for those publishers who do agree to deposit. Under the previous options, we'd assumed that almost all relevant publications would be delivered to the libraries by the publishers who therefore bore most of the transaction costs; and they were obliged to deposit, whether or not the benefits were more or less than the costs. Now, in option 5, we're assuming that the publications will either be harvested by the libraries who therefore bear most of the transaction costs, or they will be delivered by publishers on a voluntary basis because those publishers' transaction costs for delivery are less than the benefits. There is likely to be an overestimation of the costs to publishers in the calculations set out below as no assumptions have been made around lower cost of a non-obligatory scheme.

Option 5: Costs and benefits

As for Option 3 the benefits, and the costs to Legal Deposit Libraries, of adding to, maintaining and preserving the web archive using statutory regulation under the Legal Deposit Libraries Act 2003 have been modelled on the basis of assumptions about the potential size of the UK web domain, plus inferences about how harvesting activity for the UK Web Archive would change under regulation. Removing the need to obtain prior copyright permission from each rights holder means that a domain-wide snapshot of all the websites in scope becomes a practical possibility. Some curatorial selection activity would still continue, in order to identify sites of special interest which would benefit from additional quality controls and quality assurance in the harvesting process, or to choose sites and content about selected events or themes, to form additional special collections within the overall archive. But, in contrast with the permissions-based harvesting in Option 2, regulation allows for a much more comprehensive web archive, with periodic snapshots of virtually the whole UK domain. Therefore the volume of material collected can be much greater, with significant economies of scale in the collecting process.

Overall the total costs of website archiving in the Legal Deposit Libraries would be the same as in Option 3, that is approximately double those in Option 2 but enabling a much more complete and useful record of the nation's digitally published heritage of open access material, published without access restrictions.

Table 14: Cost of deposit library harvesting under statutory regulation, in Option 5

Costs of selecting websites for additional QA or special themed collections.	£0.2m-£0.3m per annum
Costs of harvesting and quality-assuring websites on average one to two times p.a., with metadata and discovery tools.	£0.3m-£0.5m in Yr1, rising to circa £0.4m-£0.6m p.a. by Yr 10
Annual costs of storage, preservation and ongoing technical support for the archived websites (estimated 100 terabytes in Year 1, rising to 5 petabytes by Year 10)	£0.4m-£0.5m in Yr1, rising to circa £0.8m-£1.1m per annum from Yr5 onwards
TOTAL (but excluding set-up costs and allocated costs of	£0.9m-£1.3m in Yr1, rising to circa

maintaining access environment, security etc)	£1.4m-£1.9m per annum by Yr10
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This equates on average to between approximately £280 and £380 per annum for each terabyte of data archived over a ten-year period, and each archived snapshot could potentially include up to 100% of the UK websites in scope.

The benefits of this activity will be received mainly by researchers and future generations, being able to use the archive as a resource, and by the nation in safeguarding a part of its digital heritage. The Legal Deposit Libraries estimate that a regulation for harvesting by Legal Deposit Libraries will facilitate the creation of a more comprehensive and also a more carefully selected archive of material that is published without access restrictions.

Option 5: Risks and assumptions

a) Risk of Loss — Regulation will permit the Legal Deposit Libraries to harvest and collect other access-restricted works more comprehensively, limited only by the availability of resources and suitable technology. Therefore, only material which is published but not collected during the period of implementation (scaling up over 10 years) or material which is published but then removed from a publisher's website before the next snapshot may still be lost. Overall, although there remains a small risk of losing some material, this risk is largely eliminated for most of the United Kingdom's digitally published heritage.

b) Copyright Risk — Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through section 8, copyright and database rights are not infringed by the Legal Deposit Libraries harvesting copies from the internet, and through section 9 the publisher is also protected against infringement of copyright, publication right or database rights, and against any claim for breach of contract, in respect of deposited copies. Therefore this risk is also mitigated or eliminated for both the Legal Deposit Libraries and publisher.

c) Defamation Risk — As described under Options 2 and 3, a person who has been defamed in archived material may seek to claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. The Legal Deposit Libraries will still put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. Also the original publisher who deposits material should theoretically inform the Legal Deposit Libraries of any such claims. But the operation of section 10 of the Act dramatically reduces the risk of liability for any defamation claims in respect of the archived copies.

Option 5: Administrative burden calculations

The administrative burden for Legal Deposit Libraries has already been included within the costs above. This section considers the administrative burden for publishers in dealing with requests from the Legal Deposit Libraries arranging permission for harvesting.

As in Option 3, regulation would permit the application of section 8 of the 2003 Act, through which material copied by a deposit library from the internet does not infringe copyright or database rights. Therefore there is no longer any need for the deposit library to contact the website owner in advance for permission. Nor is there any need for a publisher or website owner to put procedures in place to monitor rights and permissions status specifically for deposit purposes.

It is the custom of some website owners and publishers to use robots.txt, ACAP or other conventions and protocols to inform the automated harvesting tools used by web search companies and other organisations about any pages or files that they wish to prevent being indexed. Therefore some website owners or publishers may wish to amend their robots.txt or ACAP files with regard to the Legal Deposit Libraries, in order to reflect the effect of regulation in giving a special dispensation for archiving; they might see this as an administrative burden. However, Legal Deposit Libraries will use standard automated protocols in order to inform the website manager (via a "user-agent string" submitted to the web server's log of server requests) on each occasion that a copy of their content is harvested for legal deposit purposes; the website owner may choose whether or not to use this information, but there will be

no requirement for a website owner to make any change to their robots.txt files, nor take any other action.

Regulation would also permit the application of section 10 of the 2003 Act, with its legal comfort against defamation, effectively eliminating any need for a publisher to monitor and advise a deposit library of any defamatory material contained on their website.

So, for material harvested by a deposit library through regulation, the administrative burden for publishers is effectively £ Nil.

The administrative burden for publishers in permitting access for the Legal Deposit Libraries to download, copies of other electronically copied works is similar to that in Options 2 and 3.

The same calculation as described under Options 2 and 3 has been made, using the same base figures for estimating the number of publications and publishers in each category. That is:

- the number of digital publications which are potentially eligible for deposit has been estimated by reference to print, taking the average number of legal deposit deliveries to the BL of (printed) monographs, newspaper issues and serial issues each year during 2006/07 to 2008/09 as a baseline
- the number of publishing organisations, broken down by number of employees and by type of publication (books, newspapers and other periodicals) has been based upon information produced by the Office for National Statistics and shown in Table 5
- In Year 1, up to approximately 60,000 publications (monographs and serial parts) would be harvested or deposited by mutual agreement, processed and archived
- By Year 4, approximately 100,000 to 140,000 monographs and serial parts per annum would be harvested or deposited by mutual agreement, processed and archived, representing about 18% to 26% of the potential universe of publications eligible for deposit)
- By Year 10, approximately 210,000 to 300,000 monographs and serial parts per annum would be harvested or deposited by mutual agreement, processed and archived, representing about 40% to 55% of the potential universe of publications eligible for deposit).

On this basis we estimate that the overall burden for password harvesting or deposit by mutual agreement is likely to start in the first year at between £0.2m and £0.5m for the transaction costs, gradually increasing each year at a relatively constant rate as more publications are deposited. In year 4 the transaction costs would be between £0.3m and £1.9m and in year 10 they should reach a “steady state” of between £0.6m and £2.0m per annum.

Publishers’ setup costs will vary each year, depending upon how many are requested to provide access details for sites behind varying access restrictions, but we estimate that the total of publishers’ setup costs over the whole of the next ten years will be between £2.6m and £5.4m.

Therefore the total administrative burden for publishers over the entire ten-year period of electronic deposit is likely to be between £6.4m and £16.8m

As in option 4 it is also likely that, for publishers who agree to deposit electronically, this administrative burden for electronic deposit will be more than offset by savings in their total administrative burden for print deposit. As each publisher implements electronic deposit, their deposit obligation for works which are published in both print and digital media will transfer from the printed version to the digital version. Over time, therefore, the number of printed books, papers and periodicals being deposited should reduce, as each publisher by agreement with the Legal Deposit Libraries begins to deposit the electronic versions instead. By Year 10, publishers’ print deposit obligation might be almost completely eliminated except for a relatively small number of works that continue to be published only in printed form, and must therefore continue to be deposited as physical objects.

Benefits to main affected groups

We believe that there are benefits for both publishers and libraries under this option.

The benefits to libraries mainly relate to being able to harvest systematically producing a single on line archive and the potential savings that can be made from no longer needing to process a proportion of print deposits.

With regard to the benefits to publishers the new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of publications and therefore will make savings and so accrue benefits from this option. However we recognise that monetising these benefits is not easy and while we have provided some estimates below we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies and therefore the amount they will save in future under this option.

Monetising benefits to publishers

In 2005 an estimate was made of the admin burden placed on publishers of hard-copy legal deposit which was in the region of £53m. However we recognise that this was not an accurate figure. This figure, produced by PWC, was part of a wider exercise to give an indication of the costs that Government places on businesses, not to produce statistically accurate data for each regulation. The Standard Cost Model was used, which works on a relatively simple methodology, by measuring the cost (in terms of the time it takes to complete and any external costs) of completing one transaction and then multiplying it by the number of times it happens. These costs were established through interviews with publishers. It is not clear if these figures include the cost of the publications themselves. Therefore, these are not accurate costs, but rather are indicative of the burden placed on business by the regulation.

However we do know that the regulations will lessen the admin burden and therefore have attempted a benefit calculation to monetise these savings and produce indicative benefits.

Assumptions

As noted above in option 4, the £53m was an indicative cost of all hard-copy deposit. We believe it tended to overestimate the true administrative burden and therefore, for the purpose of calculating the savings as a benefit, we have adopted a very cautious approach and assumed just £10.3m (i.e. 20% of £53m) as the total cost of hard-copy deposit; a conservative assumption is supported by the results of a brief survey undertaken in July by DCMS which also indicated that £53m is likely to be too high.

To calculate the saving, £10.6m must be divided by the number of printed book titles, newspaper editions and serial issues that are published in the UK each year. This averages 537,096 per annum, based upon statistics for three years of legal deposit receipts as reported by the British Library. Therefore the administrative burden for depositing up to six copies of a printed publication is £19.74. This compares with a cost of between £3.00 and £6.50 (plus setup) for depositing one copy—which the legal deposit libraries would then share—of the same publication in non-print form.

We have then made three further assumptions to calculate the overall year-on-year savings:

- Firstly we assume a one-year lag before realising any saving, because of the need for a period of transition and testing to ensure that the electronic system is working properly before deliveries of the printed copies can stop.
- Secondly, consistent with the rest of the Impact Assessment for Option 5, we assume that, in practice, only between 40% and 55% (50% average) of the relevant publications in non-print form can be successfully harvested by the legal deposit libraries or will be deposited by mutual agreement. Although the proposed regulations require the publisher to provide a means of access for the libraries' harvester, we anticipate that, for approximately 50% of titles, the libraries will encounter other technical issues or difficulties in harvesting which the publisher is under no obligation to help them resolve.
- Thirdly we assume that 75% of printed publications that will be password-harvested or deposited by publishers are also published in non-print form. This is a higher proportion than we assumed for Option 4, because those publishers who do agree to deposit will typically do so because they can save the cost of hard-copy deposit – so the weight of hard-copy benefits is much more likely to be contained within the 50% of publications that are deposited or harvested than in the 50% that are not.

To clarify each of the options makes different assumptions on the number of items deposited. In option 4 we assumed that 100% of ebooks and e-serials would be deposited because regulation would have made it obligatory to deposit them. Whereas in options 2 and 3 we assumed 50% because it was voluntary – based on actual experience from voluntary trials and schemes, at least half of the publishers decline to participate. In option 5 we also assume 50% because a) even with passwords, harvesting behind pay walls will be only partially successful and b) only the publishers who see a clear benefit will deposit (i.e. deliver) their material and the others won't.

To calculate benefits in option 4 we assumed that out of the entire universe of e-books and e-serials that are being published, we assumed that only 50% have a direct hard-copy equivalent publication; it's impossible to find any accurate figures so this is an assumption. Therefore in option 4 we calculated the savings against 50% out of the 100% of e-books and e-serials being deposited.

For option 5, since we've assumed that only 50% of the total universe of e-books and e-serials will be harvested/deposited, we have also assume that they are more likely to be the e-books and e-serials that do have a hard copy equivalent – the publishers who agree to deposit precisely will do so because there are potential savings, and the PDFs of printed books etc. are easier to harvest than the XML or other formats of digital-only publications. So in option 5 saving are calculate on the basis of 75% of the 50% of items being harvested/deposited under option 5

Using these assumptions, the total gross saving (with a one-year lag) is estimated to be £0.9m-£1.2m in Yr2, rising to £2.8m-£3.8m in Yr10, to be offset against the cost of depositing electronically.

Therefore there is a saving to publishers which can be seen by comparing the benefits to publishers calculated above with the costs to publishers. The table below sets this out:

Table 15 – Cost and Benefits

Costs (£m)	Total Cost (NPV)	..of which to Publishers	...of which to Libraries
Low	38 (31.4)	6.4 (5.1)	31.6 (26.2)
High	60.7 (50.1)	16.8 (13.7)	43.8 (36.4)
Best Estimate	49.360.9 (40.8)	11.6 (9.5)	37.7 (31.3)
Benefits (£m)	Total Benefit (NPV)	...of which to Publishers	...of which to Libraries
Low	15.6 (12.3)	(all)	-
High	21.6 (17.1.4)	(all)	-
Best Estimate	18.6(14.7)	(all)	-

Benefits to research and scholarship

A general benefit of extending legal deposit to non-print includes the availability and continued maintenance of a national and accessible archive of UK published materials for humanistic, social, economic and scientific research, for use by the academic community, by business and industry, by the professions, by government and by private individuals. Users benefit from a geographically distributed national published archive of national and international importance on multiple sites, saving time, costs of travel and subsistence.

Benefits to the UK

Extension of legal deposit will allow for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This in turn will benefit communities in the UK of key

importance for its future well-being and prosperity: researchers and educators; wealth creators in current and emerging sectors of business and industry; and the scientific community. The nation also benefits from the international renown of the BL and the LDLs and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them.

Option 5: Wider impacts

As described in Options 2 and 3, by depositing copies of works and by permitting them to be made available to researchers, publishers are potentially giving up a part of their full prerogative under copyright to exploit works and benefit from the investment they made in publishing them.

For websites and other material that the publisher makes available for open access, i.e. without restriction, many if not most publishers might be content to permit the Legal Deposit Libraries to make the archived (harvested) copies available on the same basis. However some publishers provide open access to their content for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications. Allowing open and unrestricted access to archived copies of their material might cause a loss of web traffic to the publishers' own websites, unduly prejudicing their legitimate commercial interests.

Therefore all material archived through regulation may only be used in ways that are permitted by the 2003 Act and through regulations. An important limitation built into the 2003 Act, by virtue of its definition of a reader in section 7, is that archived copies may only be used by authorised readers on the (physical) premises of the Legal Deposit Libraries—they not be made available remotely or on line. Furthermore, regulation will put in place rules which emulate the de facto limitations in use of printed works:-

- Archived copies may only be used by authorised readers on the (physical) premises of the Legal Deposit Libraries and may not be made available remotely or on line.
- Each deposited work may only be used at one terminal at a time in each deposit library.
- The works must be secured to prevent any unauthorised copying.
- The Legal Deposit Libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

As in Options 2 and 3, for the small number of publications which are of very high value and sold in very small volumes, temporary access embargos may be permitted, to avoid prejudicing a publisher's commercial interests where the availability of even one copy that is free to read in a deposit library might be harmful to the publisher's sales. For any rare occasion in which a dispute arises between the publisher and Legal Deposit Libraries about whether such an embargo is appropriate or about the period of embargo, enforcement will be in accordance with section 3 of the Legal Deposit Libraries Act 2003 Overall, the rules for access laid down in regulation, together with embargos will all ensure that legal deposit does not have any harmful impact upon the publisher's business nor unduly prejudice the publisher's interests.

Small Firms Impact Assessment

The structure of the publishing industry shows that there are varying sizes of businesses and by looking at the organisations registered for VAT within the ONS' UK Business: Activity Size & Location report we can identify publishing organisations. The table below indicates the range of business sizes and the number of small or micro businesses (those with 50 or less employees) accounts for 5004 of the total number. Therefore we recognise that there will be an impact on small businesses from the proposed regulations.

Table 16: Number of publishing organisations

	Book Publishers	Newspaper Publishers	Periodical Publishers	TOTAL
Micro (1 to 9)	2,212	387	1,747	4,346
< 20 (10 to 19)	125	28	227	380
Small (20 to 49)	78	27	173	278
Medium (50 to 250)	50	12	93	155

Large (250+)	15	23	37	75
Total	2,480	477	2,277	5,234

The 2003 Act states that any regulations should not pose a significant burden to publishing organisations and we have therefore ensured that any regulations do not do this. The regulations will look to Legal Deposit Libraries to set up effective co-ordination for requests of deposits and they will work with publishing organisations to make sure that there is no duplication of requests and therefore no undue burdens are placed on these organisations. In particular for small firms we have accounted for them in our calculations. We have identified the costs for firms with less than 50 employees across newspapers, periodicals and book publishers to ensure we are identifying the different costs for small firms – both in terms of administrative burden and transition costs.

To ensure we are effectively identifying costs to small publishers in the consultation we will ask publishing organisations to identify themselves by size of firm. This relates to questions were we are asking them to provide the current costs of submitting deposits and potential future set up and transition costs. This way we can gather further detail on the impact on small firms.

Micro business exemption

Micro-business are not exempt from this regulation as a majority (over 80%, see table 13) of publishers are micro-businesses and therefore any exemption would make regulations ineffective.

Preferred Option

The preferred option is 5, full statutory regulation for both Legal Deposit Library harvesting and, upon agreement, publisher delivery of other works, because it is the only option which achieves all of the policy objectives:

- Option 5 does not achieve the same large scale national archive of on line publications as option 4. However, it will still provide for an extensive and useful archive to be collected systematically.
- **Overall, Option 5 is the most cost-efficient.**
- Regulation and the supporting management infrastructure will provide clear, visible and legally enforceable rules governing how the deposited copies may be used. Option 5 balances the needs of libraries and researchers with the interests of publishers and rights holders, with assurance for all stakeholders that the terms on which material is archived and made available are not subject to arbitrary change.
- Regulation will give Legal Deposit Libraries the necessary legal framework for ensuring that material may be preserved for ever and may continue to be used in future.
- The proposals in Option 5 ensure that the deposit scheme is manageable for Legal Deposit Libraries and does not impose any unreasonable burden on publishers.

Additionally:

- **Option 5 also offsets the burden of electronic deposit against the burden for depositing printed publications, which may be larger. The impact for each individual publisher might vary but, overall and by the end of the 10-year period, the annual administrative burden in transaction costs of depositing electronic publications should be offset by even greater savings in the existing annual administrative burden for depositing printed publications.**

Table 17: Summary of costs and benefits for each option

<i>10-year totals</i>	<i>Option 1</i>	<i>Option 2</i>	<i>Option 3</i>	<i>Option 4</i>	<i>Option 5</i>
Legal Deposit Libraries' operating costs (£M's)	0	21.6 – 30.0	28.0 – 39.0	29.4 – 40.8	29.4-40.8
Legal Deposit Libraries' set-up costs (£M's)	0	2.2 – 3.1	2.2 – 3.1	2.2 – 3.1	2.2-3.1
Publishers' burden: transaction costs (£M's)	0	6.3 – 15.8	3.8 - 11.4	7.6 – 22.9	3.8-11.4
Publishers' burden: set-up costs (£M's)	0	2.6 – 5.4	2.6 – 5.4	5.2 – 10.8	2.6-5.4
Benefits: websites archived (millions)	0	0.01 – 0.02	12.8 -17.5	12.8 -17.5	12780-17750
Benefits: web archive size (terabytes)	0	50 – 75	4500 – 6250	4500 – 6250	4500-6250
Benefits: e-books archived (000's)	0	238 –	238 – 330	475 – 650	238 – 33
Benefits: e-newspapers archived (000's)	0	396 – 550	396 – 550	792 – 1100	396-550
Benefits: e-periodicals archived (000's)	0	634-880	634-880 – 900	1267 – 1760	634-880
Other: Offset costs & burden of print deposit	No	No	No	Yes	Yes for publishers depositing by agreement (estimated 50% overall)

Other: Mitigation of legal risks	No	No	Harvested websites only	Yes: harvested websites and other publications	Yes: harvested websites and other publications
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Table 18: List of Countries which have introduced legislation for the deposit of either off line publications, on line publications or both¹⁴

Austria	Belgium	Canada
Czech Republic	Denmark	Estonia
Finland	France	Germany
Hungary	Iceland	Italy
Japan	Latvia	Lithuania
New Zealand	Norway	Poland
Portugal	Romania	Russia
Serbia	Slovakia	Slovenia
Spain	Sweden	

¹⁴ This was compiled in early 2009. Further Legislation may have been introduced in these and other countries since, but we have not yet been able to confirm this.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p> <p>A sunset clause is included in the draft regulations. A review will be initiated two years prior to the sunset clause expiry.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To ensure that the Regulations are operating as expected. Further details will be included following the results of the consultation.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>To be decided following the consultation</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>To be decided following the consultation</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>To be decided following the consultation</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>To be decided following the consultation</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>