



department for  
**culture, media  
and sport**

# Government Response and Summary of Responses to the Consultation on the Legal Deposit of Non-Print Works

24 February – 18 May 2012

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## Introduction

1. Under the legal deposit system, a copy of every UK print publication must by law be deposited in the British Library by its publishers, and five other legal deposit libraries can request a print publication to be deposited with them.<sup>1</sup>
2. Many publications are now only released in a non-print format (either off or on line) and at the moment there is no legal requirement for non-print works to be deposited. The Legal Deposit Libraries Act 2003 (“the 2003 Act”) reaffirmed existing provisions for the deposit of printed publications and created a framework that makes it possible for secondary legislation to be introduced to allow for the legal deposit system to be extended to non-print works.<sup>2</sup>
3. The draft Legal Deposit Libraries (Non-print works) Regulations 2013 are designed to ensure that the nation's non-print published output (and thereby its intellectual record and published heritage) is preserved as an archive for research purposes and the use of future generations.
4. The Department for Culture, Media and Sport (DCMS) ran a 12 week public consultation between 24 February and 18 May 2012 on the draft regulations, guidance and impact assessments for non-print legal deposit. This consultation followed two previous consultations on earlier versions of the draft regulations that were held in 2009-10 and 2010-11.<sup>3</sup>
5. The draft regulations in the most recent consultation reflected some key changes made in response to stakeholder feedback from the previous consultation in 2010-11, including a revision of the scope such that publishers are only obliged to deliver off line content and on line content that can be obtained through a web harvesting process.<sup>4</sup> The revised regulations also address non-print content that is substantially the same as a printed work, thus giving publishers the opportunity to deposit in a non-print format instead in these instances and reducing the costs to the publishing sector. In the recent consultation, DCMS primarily sought views on the parts of the regulations which had been revised and on the impact of the regulations.

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<sup>1</sup> The other legal deposit libraries are The National Library of Scotland, the National Library of Wales, the Bodleian Library in Oxford, Cambridge University Library and Trinity College Library, Dublin.

<sup>2</sup> Legal Deposit Libraries Act 2003 - [http://www.opsi.gov.uk/acts/acts2003/ukpga\\_20030028\\_en\\_1](http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1)

<sup>3</sup> 2009-10 consultation:

[http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference\\_library/consultations/6506.aspx](http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference_library/consultations/6506.aspx); 2010-11 consultation: <http://www.culture.gov.uk/consultations/7449.aspx>

<sup>4</sup> Government Response to the 2010-11 consultation - <http://www.culture.gov.uk/publications/8029.aspx>

## Government response – executive summary

6. The Government would like to thank all those who responded to the public consultation. We received 27 responses to the consultation – a list of respondents is available in Annex A and the full responses can be found on the DCMS website.
7. The consultation responses provided general support for the policy objective of preserving the nation's non-print published output and the proposed non-print legal deposit regulations were broadly welcomed. We therefore intend to take forward the regulations with some minor changes.
8. The main issues raised in consultation responses related to:
  - i) the scope of non-print works
  - ii) access to deposited content
  - iii) security and integrity of deposited content
  - iv) aspects of the web harvesting process
  - v) restrictions on access to deposited content following the expiry of copyright
  - vi) the absence of wider 'fair dealing' exceptions under permitted activities
  - vii) the exclusion of micro-businesses from certain measures
9. We consider that it will be possible to address concerns relating to the scope of non-print works, access to deposited content, and the security and integrity of the content by providing further guidance or explanation to stakeholders. Similarly, relevant aspects of the web harvesting process can be clarified and improved by minor changes to the regulations.
10. We acknowledge the concerns from some respondents over the restrictions on access to content following the expiry of copyright, but given that this will not have any immediate practical impact, we consider that revisiting the issue as part of a post-implementation review of the regulations will be the most effective solution.
11. We consider that it is reasonable to amend the conditions under which deposit libraries may supply a copy of relevant material to include criticism, review and news reporting, and that this brings the regulations more closely in line with 'fair dealing' exceptions under copyright legislation, while maintaining the balance that needs to be struck between the needs and interests of the main stakeholder groups.
12. We note the arguments made against the partial exemption for micro-businesses, but we consider that the approach taken is in keeping with the Government's moratorium policy and for a limited period only, so should be upheld.
13. The Government response to each aspect of the consultation is set out in bold text alongside the summary of responses to the consultation. In summary, we intend to proceed with introducing the Legal Deposit Libraries (Non-print works) Regulations in April 2013, will be making a number of minor amendments to the proposed regulations in response to the consultation and will be seeking to clarify other relevant points in accompanying guidance.

## Summary of responses to the consultation

### *Q1 - respondents by category*

14. There were 27 respondents to the consultation, comprising: all six legal deposit libraries; five organisations representing research, libraries and archives interests; four publishing trade bodies; four organisations representing wider media interests; three publishers (including one micro-business); and five other stakeholders. A full list of respondents is available in Annex A.

### *Q2 - the clarification of non-print works within scope of the regulations*

15. Legal deposit libraries and the majority of respondents with research, libraries and archives interests supported the clarification of non-print works within scope and commented that it is sufficiently broad to help future-proof the regulations as formats evolve. Publishing trade bodies generally considered the clarified scope to be workable and acknowledged it would be difficult to define the scope in more detail given the pace of technological change.
16. Opinions varied on the exclusion of works which are predominantly sound and film. A number of individual queries were made on the detailed interpretation of the scope of the regulations.
17. **Government response: We intend to revise the definition of non-print works explicitly to exclude audio-visual content, as in addition to the consultation responses on this issue, we consider that there are good drafting grounds to make this change. The guidance document will be updated to provide further clarity on the scope of the regulations, including the status of audio-visual content, artistic works, social networks, apps, and exclusions of liability in relation to work deposited under the regulations. Further practical interpretation of works within scope can be managed via the Joint Committee on Legal Deposit (JCLD).<sup>5</sup>**

### *Q3 - the obligation to deliver on line work via a web harvester no longer only applying to the first deposit library to make the request*

18. 82% of respondents were content with this approach, though some publishing interests flagged up the importance of co-ordination work between deposit libraries for example to avoid unnecessary duplication or impact on publishers' web platforms.
19. **Government response: The web harvesting software used by deposit libraries will analyse available bandwidth and traffic volume to determine visit frequency and what it can harvest. Additionally, the deposit libraries will implement a co-ordinated collections policy.**

### *Q4 - the delivery of on line work by web harvester*

20. This question asked whether any issues would arise from the provision that the default method of delivery of on line work would be a request by the web harvester to the IP address from which the work is made available, with at least 14 days' written notice of a request for work behind a login facility.

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<sup>5</sup> The JCLD is a body comprised of representatives from the deposit libraries and the publishing trade bodies; its main purpose is to facilitate cooperation between publishers and deposit libraries for the effective implementation of statutory and voluntary deposit arrangements

21. All publishing interests responding to this question commented that the 14 days' notice period to deal with requests behind a login facility was insufficient, whereas a 28 days or one month notice period would allow more time to cover more complicated content hosting scenarios. Some of the deposit libraries also recommended a longer time period, and observed that the regulations as drafted appeared to present a practical issue on the sequence for notice periods and requests.

22. **Government response: We will amend the regulations to confirm that a request by a web harvester for material behind a login facility will only count as such a request if the deposit library has given the publisher at least one month's prior written notice of the request. We will also stipulate that a deposit library must not use login details provided by a publisher for any purposes other than compliance with these regulations.**

*Q5 - the delivery of on line work within 14 days of a request where an alternative method of delivery to web harvesting has been agreed*

23. Some respondents suggested that 14 days might be too short for mutually agreed methods of delivery. Deposit libraries noted that the wording of the draft regulation inadvertently excluded micro-businesses from delivering by web harvesting on a voluntary basis.

24. **Government response: We will amend the regulations to extend the time period for delivery under an agreed method to one month following the request. We will also amend the regulations to allow a micro-business or start-up to voluntarily agree to deliver its works by web harvesting in addition to any other method of delivery. Separately, we intend to combine the web harvesting regulation and the agreed method of delivery regulation, which we consider will improve the drafting.**

*Q6 - the definitions of on line work 'published in the UK'*

25. The majority of respondents were largely supportive of the definitions set out in the draft regulations. Various alternative drafting suggestions were made but without consensus and a number of individual points were raised on defining content related to the UK.

26. **Government response: We consider that the definitions of published in the UK should largely remain as drafted, but we will clarify the reference to the treatment of on line work where access is denied to persons within the UK. The issues of linked sites and works incorporating content from locations outside the scope of the regulations has been dealt with in the design of the web harvester and this can be clarified in the accompanying guidance. We expect deposit libraries to address issues such as the treatment of material having only a slight or passing connection to the UK in their collections policy.**

*Q7 - the provision for legal deposit libraries to transfer or lend relevant material to any other legal deposit library*

27. 75% of respondents to this question considered that no issues would arise from the approach set out in the draft regulations. Some publishing interests suggested limiting the purposes for which works could be transferred or loaned and emphasised the paramount importance of security arrangements.

28. **Government response: We consider that this section of the regulations should remain as drafted, and that the use of relevant material is anyway limited by the provision that follows it; all other points raised can be addressed in the guidance.**

*Q8 - the provision for deposit libraries to use relevant material for the purposes of reviewing and maintaining the material, and for their own research*

29. 88% of the respondents to this question considered that no issues would arise from this approach. A couple of publishing representatives suggested additional limitations on use and another respondent with wider media interests asserted that the only acceptable use of relevant material by deposit libraries should be for archive purposes.

30. **Government response: We consider that deposit libraries should be able to use relevant material in the same way that they can currently use print deposit material. On this basis, we will make an amendment to the regulation to specify that deposit libraries' use of relevant material for research must be on a non-commercial basis only.**

*Q9 - the transfer of non-print legal publications from the National Library of Scotland to the Faculty of Advocates*

31. 79% of respondents to this question considered that no issues would arise from this approach, while security of content and limiting of purpose was again highlighted by the publishing trade bodies. The Faculty of Advocates stated a preference for this provision to use the wording of clauses 5(1) and 5(4) of the National Library of Scotland Bill.<sup>6</sup>

32. **Government response: While the language and scheme of the Scottish legislation are different to those of the regulations, we are content that the provision as drafted and the National Library of Scotland Act work properly together.**

*Q10 - the supply of copies of non-print deposited material for purposes beyond research and study, namely for parliamentary or judicial proceedings, or a Royal Commission or statutory inquiry*

33. The deposit libraries and respondents with wider research, libraries and archives interests supported the inclusion of these permitted uses, but also advocated the allowance of wider 'fair dealing' exceptions as permitted under normal copyright law. It was observed that several of these exceptions remain unpermitted under the draft regulations, for example i) copying for criticism, review and news reporting and ii) copying under statutory authority. Publishing representatives generally accepted this approach while making individual points on aspects such as the protection of commercial interests.

34. **Government response: We consider that it is reasonable to amend the regulations to include criticism, review and news reporting, in line with the 'fair dealing' exceptions permitted under normal copyright law, and that doing so will maintain the balance that needs to be struck between the needs and interests of the main stakeholder groups.**

*Q11 - the adaptation of any on line and off line work for the purposes of preservation*

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<sup>6</sup> The NLS Bill received Royal Assent in June 2012 – <http://www.legislation.gov.uk/asp/2012/3/contents/enacted>

35. 70% of respondents to this question considered that no issues would arise; though publishing trade bodies raised some considerations in this area and wanted a level of influence in deposit libraries' approach to adaptation.

36. **Government response: Adaptation under the regulations is for the purposes of preservation and not about adaptation of the content itself. Adaptation may only be done for the purposes set out in the regulations which are explicitly linked to preservation or replacement. Therefore we do not think a system is required for checking the integrity of later versions, nor that any issue is raised in relation to authors' moral rights.**

*Q12 – the disposal of relevant material*

37. 88% of respondents to this question thought there would be no issues in allowing deposit libraries to dispose of a work or a copy of a work, provided at least one copy of the work which is most suitable for preservation purposes is retained. Respondents with publishing interests individually raised various points, including a suggestion the regulations should make clearer that 'disposing' of copies means destroying them (provided a copy of record is retained) and excludes making them available to third parties.

38. **Government response: We are content that the regulations as drafted make explicit that disposal of relevant material is only permitted by way of destruction.**

*Q13 – the copying of work from the internet*

39. Deposit libraries were strongly supportive of the ability to copy freely available material from UK websites (including those of micro-businesses) without infringing rights. However some felt confusion might arise from this not being explicit within the regulations and that this ability should be clarified in the explanatory note. Such a clarification was also strongly supported by respondents with wider research interests.

40. **Government response: We agree that it would be helpful to ensure that the ability of deposit libraries to copy work freely from the internet is clear to stakeholders and this can be explained in the explanatory note and other guidance material.**

*Q14 - impact on publishers: the burden on micro-businesses and start-ups*

41. All respondents to this question agreed that the partial exemption for micro-businesses and start-ups would place no mandatory burden on these publishers, though deposit libraries raised concerns about the partial exemption which are discussed below under themes raised in response to Q23.

*Q15 – impact on publishers: the future of production in print and non-print*

42. The consensus from respondents in the publishing sector was that the majority of print works would continue to be produced in print format for at least another generation and potentially far longer. Scholarly journals and to some extent scholarly monographs were identified as most likely to migrate to non-print-only delivery in the foreseeable future.

*Q16 - impact on publishers: the cost of depositing in print; Q17 - the potential savings in switching to non-print deposit in the medium to long term*

43. There were only a handful of responses to these related questions. Figures on the cost of



depositing in print were very wide ranging with those supplied for newspapers and journals suggesting a lower unit cost than estimated in the impact assessment, while those for supplied for books were notably higher. Responses indicated that there were some potential savings from switching to non-print but overall this was not thought to be significant.

44. **Government response: We consider that the figures supplied are not sufficient to take a view across the whole sector which is the current basis for the impact assessments, and that the existing impact assessment figures on the cost of depositing in print should be retained.**

*Q18 - impact on publishers: the potential savings in agreeing with a deposit library to deposit works in a non-print format where works are published in both print and non-print format; Q19 - the anticipated costs of delivering off line work; Q20 - the administrative costs for providing login details to allow web harvesting of on line works by a deposit library; Q21 - the option and associated costs for seeking an alternative method of delivery for on line works to the default web harvesting method*

45. Only a small number of responses were received to the above set of questions on the impact on publishers. In relation to Q18, there was general consensus from publishers that produce the same works in both print and non-print formats that there were some potential savings from agreeing to switch to non-print deposit, but that resource implications for setting up non-print deposit arrangements could be significant. However, no responses were evidenced with figures. In relation to Q19, the only respondent to this question was a publishing trade body who speculated that the costs for depositing off line works might be similar to those for print deposit, and noted that many of their members already participate in the voluntary scheme for off line deposit.
46. In relation to Q20, responses noted that costs for providing login details would depend on how the web harvesting operates. Only one publisher provided figures, which suggested that costs could be slightly higher than the estimate in the impact assessment. In relation to Q21, publishers noted that their initial experience of web harvesting was likely to influence a subsequent decision on how to deliver works. One publisher commented that they may seek an alternative method of delivery for their publications that include datasets as this would potentially be more efficient and economical than web harvesting.
47. **Government response: No figures were provided in response to the above questions (other than those supplied by one publisher in relation to Q20) and we therefore consider there is not a sufficient basis for revising assumptions and figures in the impact assessments.**

*Q22 – the impact on deposit libraries*

48. There was broad agreement that the description of the impact on deposit libraries as set out in the impact assessments was accurate, though some observed that the cultural benefits to future generations would be significant if quantified.

*Q23 - other comments, issues or concerns*

49. The main issues that arose in response to this section of the consultation were:

*'Perpetual copyright' – restrictions on access to content following the expiry of copyright*

50. All the deposit libraries and many of the respondents representing research interests were concerned that the permitted activities in relation to non-print material are restricted in perpetuity, even once the copyright of deposited non-print material has expired. They proposed that the regulations should be amended to harmonise with wider copyright law that would facilitate wider access once copyright expires.

51. **Government response: In the interests of introducing non-print legal deposit without further delay, we consider it preferable on balance to take the regulations forward with the current position on restrictions to access, but we will revisit the issue of ‘perpetual copyright’ as part of the post-implementation review for the regulations. The issue only arises when copyright is otherwise due to expire (usually 70 years after publication of a work), so in practice the issue will not affect non-print legal deposit for many years to come.**

*Partial exemption for micro-businesses and start-ups*

52. Half of the deposit libraries stated that they consider the partial exemption of micro-businesses would contribute to the ‘digital black hole’ which the regulations seek to plug. A few respondents pointed to the economic and public benefits of a more comprehensive archive, including the benefit to micro-businesses of a secure archive of their non-print output. The National Libraries of Scotland and Wales noted the greater proportion of publishers in Scotland and Wales that could be classed as micro businesses and the potential gap in collection of national material. Publishing trade bodies generally welcomed the exemption but suggested a continuation of the voluntary deposit scheme for non-print content.

53. **Government response: The Government’s moratorium policy applies to all new domestic regulation that affects microbusinesses and start-ups. The partial exemption will only apply during the first year of non-print legal deposit and an end date of 31 March 2014 for this exemption will be included on the face of the regulations. In relation to the potential benefit of archiving for micro-businesses, they do have the option of depositing on line work as they are within scope of the regulations allowing publishers to deliver on line work by an agreed method.**

54. Other key points and actions arising from responses to this section are:

*Embargoes*

55. **We received a range of feedback on the topic of embargoes, from both the user and publisher perspectives. In response to the feedback received, we will amend the regulations to specify that rights holders have the ability to request an embargo, allow for later embargoes on material which was initially available to readers via the deposit libraries, and align the test for deposit libraries to determine whether an embargo should be granted with the similar test under the 2003 Act. In relation to comments that the automatic seven days’ delay between delivery and reader access for on line material may be insufficient, we consider that if a longer period is justified then this can be provided for under existing embargo arrangements. However, we will make a slight amendment to the regulation to clarify that *at least* seven days must elapse between delivery and reader access for online material. In relation to concern about the length of the embargo period and the potentially indefinite embargoing of material, we do not propose to change existing rules as each extension must be justified on its own**

**merits.**

*Definition of a 'business'*

56. **In response to feedback that the definition of a 'business' should be clearer, we intend to simplify this by moving it away from the definitions in tax legislation and instead adopting the wording of a person acting 'in the course of a business', leaving 'business' to have its natural meaning. This meaning will be broad enough to extend to civil society organisations if they are engaged in trading activities.**

*Security and integrity of deposited content*

57. **We acknowledge the importance of security and integrity of deposited content to the publishing sector but do not consider it would be appropriate for security arrangements to be set out in the regulations. These arrangements should be dealt with through joint working between publishers and the deposit libraries.**

*Premises*

58. **In response to concerns from some publishing interests that the regulations as drafted did not specify that computer terminals would be on deposit library premises and thus could imply the possibility of access to relevant material from terminals off site, we will amend the reference in the regulations to make clear that the terminals must be located on deposit library premises.**

*Practical implementation*

59. **Respondents identified a number of areas for consideration in relation to practical implementation of the scheme, including the operation of web harvesting, data protection and privacy arrangements, and procedures for addressing any breach or lapse in relation to deposited material or the inadvertent archiving of illegally available work. We consider that these practical issues may be appropriate for consideration by the Joint Committee on Legal Deposit and/or addressed via circulation of the deposit libraries' collections policy. We also consider that it will be important to monitor the implementation of the non-print legal deposit regulations for impact and effectiveness and will be developing a post-implementation review plan for the regulations.**

## **Next Steps**

60. **In line with the action points set out above, we will make a number of amendments to the draft regulations. We intend to lay the regulations in Parliament with the aim that they come into force in April 2013.**

## **Annex A - List of respondents to the consultation**

Below is an alphabetised list of the respondents to the 2012 consultation on draft regulations for non-print legal deposit:

1. Association of Learned and Professional Society Publishers
2. Bodleian Libraries
3. British Library
4. Cambridge University Library
5. Channel 4
6. Chartered Institute of Library and Information Professionals
7. Consumer Focus
8. Design and Artists Copyright Society
9. Etched Pixels
10. Faculty of Advocates
11. Higher Education Funding Council for England
12. Libraries and Archives Copyright Alliance
13. National Library of Scotland
14. National Library of Wales
15. Newspaper Licensing Authority
16. Newspaper Publishers' Association and the Newspaper Society
17. One Voice Wales
18. Pact
19. Professional Publishers Association
20. Professor Nicholas Cook
21. Publishers Association
22. Reed Elsevier
23. Richard Iestyn Hughes
24. Royal Holloway University of London
25. Trinity College Library
26. Welsh Government
27. Yahoo! UK and Ireland