

<b>Title:</b> Regulation for the legal deposit of UK on line publications  <b>IA No:</b> DCMS006  <b>Lead department or agency:</b> Department for Culture, Media and Sport  <b>Other departments or agencies:</b> NA	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 20/06/2012		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Daniel Halpern 02072116919			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-25.2m	£5.3m	£-0.8m	YES   OUT

**What is the problem under consideration? Why is government intervention necessary?**  
 The Legal Deposit Libraries Act 2003 (the 2003 Act) reaffirmed existing provisions for printed publications published in the UK to be deposited free of charge in the British Library. In addition, five other libraries are also each entitled to receive, on request, one free copy of such publications. These libraries, together with the British Library are known collectively as the Legal Deposit Libraries. As publishers shift to digital works, there is concern that material will not be preserved for future generations. The 2003 Act created a framework of legislation in which regulations could be made for the deposit of non-print publications and we believe the time is now right to start to capture non-print material.

**What are the policy objectives and the intended effects?**  
 The objective is to allow the preservation of non-print publications the material for future generations. The regulations under the 2003 Act will extend legal deposit to include off line content, and on line content that can be obtained through a harvesting process. They also cover on line content that is substantially the same as a printed work, removing the need to deposit print and reducing the costs to the publishing sector. Separate impact assessments have been prepared for the off line and on line elements of the regulations. This impact assessment is only for on line content. Where there is a net benefit in the on line impact assessment, this is partially offset by a small net cost in the off line impact assessment (DCMS004).

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 1. Do nothing – leave archiving responsibility to the market  
 2. Statutory regulation (preferred option) – allowing for web harvesting of both freely available and access-restricted on line content with, in addition, alternative delivery of content by agreement if publishers prefer. We believe our preferred option will provide a high quality national archive while avoiding a disproportionate burden on the publishing industry or society as a whole.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date:** 04/2017

Does implementation go beyond minimum EU requirements?			NA		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> YES	<b>&lt; 20</b> YES	<b>Small</b> YES	<b>Medium</b> YES	<b>Large</b> YES
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:  Date: 26/06/2012

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2009	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -31.8	High: -18.5	Best Estimate: -25.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	5.9	3.2	30.4
High	14.1	5.1	48.3
Best Estimate	10.0	4.2	39.3

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

Costs to Legal Deposit Libraries from the setup and maintenance of a web harvesting system, as well as storage of information and curatorial activities. These are estimated on the basis of British Library estimates and amount to present value costs of £30.5m in the best estimate. Costs to publishing businesses from the setup of IT systems to be compatible with the harvesting system, and individual transaction costs that occur as material is taken. These are estimated on the basis of ONS statistics of publisher numbers, British Library estimates of the number of deposits, and Publishers' Association estimates of unit costs and amount to present value costs of £8.9m in the best estimate.

#### 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 deposit 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	0.0	1.5	11.8
High	0.0	2.1	16.5
Best Estimate	0.0	1.8	14.1

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

Benefits to publishing businesses able to make efficiency savings as a result of the policy proposal, by substituting from more costly print to less costly on line non-print formats to meet their legal deposit obligations. These are estimated on the basis of PWC assessments of the costs of the current print legal deposit obligation in combination with estimates from the British Library on the expected uptake of this facility, and amount to present value benefits of £14.1m.

#### 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. The Evidence Base sets out a full qualitative discussion of the benefits that could accrue to society from these impacts.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.50%
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In respect of works deposited or collected under the new regulations, Section 8 of the 2003 Act provides the Legal Deposit Libraries with protection against infringement of copyright and database rights. Section 9 protects publishers against infringement of copyright, publication or database rights and any claim for breach of contract, in respect of deposited copies. Section 10 dramatically reduces risk of liability for any defamation claims in respect of archived copies. Micro businesses are exempt in financial year 2013-14 from all measures except those placing no mandatory burden on publishers.

### BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 1.3	YES	OUT
Benefits: 2.1		
Net: -0.8		

# **Evidence Base**

## **Policy Background**

1. 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. Hereinafter these are referred to as the "Legal Deposit Libraries":
  - British Library ("BL")
  - Bodleian Library, Oxford ("Bodleian")
  - University Library, Cambridge ("CUL")
  - Library of Trinity College, Dublin ("TCD")<sup>1</sup>
  - National Library of Wales ("NLW")
  - National Library of Scotland ("NLS")<sup>2</sup>.
2. 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, Olympics, Media and Sport ("Secretary of State") 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 the Legal Deposit Libraries and publishers likely to be affected have been consulted. The Secretary of State must also be 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.

## **Problem under consideration**

3. 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. The majority of non-print works are made available on line. On line media includes the delivery of non-print works through, for example, a publisher's own website, e-books distributed via on line businesses such as Overdrive, or via aggregators such as Google News. A more limited amount of non-print publications such as encyclopaedias may be ordered off line, generally as DVDs, and other off line publications may be e-mailed to subscribers as opposed to being directly downloaded from a website. Without appropriate legal, technical and institutional frameworks to secure the protection of this non-print heritage, it is at risk of being lost forever.
4. 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 non-print (digital) publications. This Impact Assessment considers options for addressing non-print legal deposit in the UK, in relation to non-print (digital) content which is made available to the public on line.

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<sup>1</sup> Trinity College Dublin has historically been entitled to receive a copy on request of all printed works published in the United Kingdom under the legal deposit scheme.

<sup>2</sup> The Act also confers rights for access to legal works deposited with NLS upon the Library of the Faculty of Advocates ("FoA")

5. 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 for a self-regulated voluntary scheme, with active requesting by legal deposit libraries, in relation to non-print publications in microform and off line electronic media and UK on line publications, which are available free of charge and without access restrictions to the Secretary of State for Culture Media and Sport. A public consultation exercise was undertaken at the end of 2009 on the Panel's recommendations.<sup>3</sup> In Spring 2010 LDAP submitted recommendations on UK commercial and protected on line publications. This led to a second consultation<sup>4</sup>, but the Government that on the basis of feedback from publishers we had insufficient evidence that the proposals were not overly burdensome. Our new consultation in February to May 2012<sup>5</sup> revises the earlier proposals to place a lower burden on businesses. This impact assessment explains the process of arriving at a final preferred option for government intervention, and analyses the likely impact of this option on relevant stakeholders.

## Rationale for intervention

6. The disappearance of published 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.
7. Heritage in this form is a positive externality as it produces a number of "external" social benefits that exceed the "private" benefits that any individual would take into consideration when taking a costly market decision on archiving works. These benefits include improvements in mental wellbeing, education, and local/national identity. Further benefits include 'bequest value' that stems from preserving the heritage for future generations. The fact that these, often considerable benefits, are not taken account of in any free market decision on the archiving of works means that from the perspective of society there will be a tendency to systematically undersupply these materials.
8. For printed (non-digital) publications this externality is normally corrected 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 – an arrangement known as "legal deposit". This helps to ensure there is a single archive, overcoming potential coordination issues within a large and diverse sector. The benefit of published heritage can be found in a study commissioned by the British Library, which found the total value each year of the British Library to the UK economy was £363m, with £59m going directly to users of the services and £304m to wider society<sup>6</sup>.
9. Non-print works are increasingly becoming a feature of everyday life, and fulfil equivalent functions of information dissemination to the more traditional forms of print works. Failing to capture this non-print aspect of our published heritage would result in an uncorrected market failure. Government should intervene to avoid this societal loss.

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<sup>3</sup> [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)

<sup>4</sup> <http://www.culture.gov.uk/consultations/7449.aspx>

<sup>5</sup> <http://www.culture.gov.uk/consultations/8878.aspx>

<sup>6</sup> British Library (2004), *Measuring Our Value*, London: British Library

## Policy objectives

10. Given the problem under consideration and the rationale for intervention set out above, government action should have several policy objectives:
  - a. To ensure a national archive of non-print publications.
  - b. To enable an efficient system in which material is archived and preserved in the legal deposit libraries.
  - c. To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders.
  - d. To facilitate long-term preservation, so that the material may continue to be used in future.
  - e. 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.
11. The proposal for the legal deposit of on line publications discussed in this impact assessment is one part of a linked proposal. Proposals for the legal deposit of off line publications go hand in hand with this proposal and provide an overall benefit when taking in the context of the wider policy area. In line with advice from the Regulatory Policy Committee, we have produced separate impact assessments for off line and on line publications, and this impact assessment for on line publications should be viewed alongside the impact assessment for off line publications<sup>7</sup>.

## Options considered

12. This impact assessment deals with the final preferred policy option that is intended to be taken forward as proposed legislation. The process of arriving at this final preferred policy option is nevertheless important. This option has developed from the process of public consultation.
13. Following on from the two previous public consultations<sup>8</sup> noted in paragraph 5, the DCMS ran a new consultation between February and May 2012.<sup>9</sup> This consultation ran along broadly similar lines to the earlier two, but included several significant amendments to ensure that burdens on business (which had previously been considered to be too great for the regulations to proceed further) were reduced, as well as including further clarifications on the scope of the regulations. A significant change (discussed later on in this impact assessment) was that micro-businesses were exempt from certain aspects of the regulations under a moratorium lasting until April 2014.
14. Our preferred option, presented in the 2012 consultation, was option 5 (statutory regulation allowing for web harvesting of both freely available and access-restricted on line content with, in addition, alternative delivery of content by agreement if publishers prefer).
15. Option 5 was added following feedback received in the previous consultation during 2010-11 that the options available at that stage posed too great a burden on publishers.
16. Under option 5, legal 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

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<sup>7</sup> The "IA No" for the off line component of this regulatory package is DCMS004.

<sup>8</sup> [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), <http://www.culture.gov.uk/consultations/7449.aspx>

<sup>9</sup> <http://www.culture.gov.uk/consultations/8878.aspx>

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 a notice period to provide login details to the deposit library to allow for the delivery of the access-restricted content, or to pro-actively negotiate an alternative method of delivery with the deposit library. If the publisher does not provide login details to allow for delivery or seek an alternative delivery arrangement, 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.

17. 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 obligation to deliver by way of web harvester.

18. Our main reasons for selecting Option 5 as the consultation preferred option were:

- Option 5 lessens the burden on publishers that would have been placed on them under the previously preferred Option 4 (described on page 9). The default obligation to deliver, for both freely available and access-restricted content, is now by web harvester and there is no obligation to provide background databases, complex files and other costly operating systems via the default web harvesting route. If an on line work cannot be deposited via the harvesting process then it doesn't have to be deposited.
- Unlike Option 2 and Option 3 (described on page 8-9), Option 5 provides legal protections for copyright and defamation risk in respect of all deposited material. The only exception to this is for instances where on line works cannot be delivered by harvester but the publisher has nevertheless voluntarily deposited the work outside of the terms of the regulations. We expect such circumstances to be relatively limited.
- Option 5 allows for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This will in turn benefit communities of key importance for the UK's 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 legal deposit libraries and their collections; and from the economic activity generated by the significant numbers of foreign researchers who utilise them.
- Option 5 also offsets the burden of non-print 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.
- Although option 5 will not achieve the depositing of all UK on line publications, we consider that it strikes a fair balance between maintaining a strong archive of our cultural heritage and maintaining a proportionate level of burdens on business and civil society organisations. The selection of Option 5 as the consultation preferred option was supported with evidence on the overall costs and benefits to society, and the cost burden that is likely to be imposed on publishing businesses. This is set out in *Table 1* below. The methodology that supports these calculations is explained both in the consultation stage impact assessment and below on page 11 in the current impact assessment.

19. Table 1: Consultation stage cost benefit analysis of options

PV Cost / PV Benefit / NPV £m (2009 prices)	Option 2 <sup>10</sup>		Option 3		Option 4		Option 5	
	Low	High	Low	High	Low	High	Low	High
<i>PV Costs</i>								
Library Setup	2.07	0.00	2.87	2.07	0.00	2.87	2.07	0.00
Library Operating	17.76	24.67	23.03	31.99	24.13	33.51	24.13	33.51
Publisher Setup	2.19	4.56	2.19	4.56	4.38	9.12	2.19	4.56
Publisher Transaction	5.14	12.76	3.04	9.16	6.09	18.33	3.04	9.16
Total Costs	27.16	44.86	30.33	48.58	36.66	63.82	31.43	50.10
<i>Best Estimate</i>	36.01		39.46		50.24		40.76	
<i>PV Benefits</i>								
Publisher Print Savings	0.00	0.00	0.00	0.00	16.43	22.83	12.33	17.12
Total Benefits	0.00	0.00	0.00	0.00	16.43	22.83	12.33	17.12
<i>Best Estimate</i>	0.00		0.00		19.63		14.73	
NPV	-27.16	-44.86	-30.33	-48.58	-20.22	-41.00	-19.10	-32.98
<i>Best Estimate</i>	-36.01		-39.46		-30.61		-26.04	

Table 1 demonstrates that in relation to the other options considered as set out on pages 7-9, option 5 was the most cost effective means of meeting the policy objectives.

20. The other options we considered (but decided not to put forward as the preferred option) were:

Option 1: Do nothing

21. The first option was 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.

22. Our main reasons for not selecting Option 1 as the consultation preferred choice were:

- Whilst some professional (typically large) publishers archive their own material, enquiries by the Legal Deposit Advisory Panel showed 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.
- The relatively small numbers 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.

<sup>10</sup> Option 1 is not presented in Table 1. Option 1 was simply the "do nothing" option; as such it represents the zero cost, zero benefit baseline.

- Publishers who currently deposit substantially similar works on paper would not benefit from the cost savings of non-print depositing. Existing legislation does not allow them switch to non-print depositing even where they wish to do so and there is no objection from legal deposit libraries.
- 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.

23. The second option comprised 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.

24. Our main reasons for not selecting Option 2 as the consultation preferred choice were:

- 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 need to obtain prior copyright permission is a severe constraint on benefits. It was estimated that with existing resources deposit library staff would only be able to obtain permission successfully for between 700 and 1200 new websites each year. Whilst this would over a 10 year period add between 7000 and 12,000 to an existing 7,142 websites gathered on the British Library / National Library of Wales 'UK Web Archive', these numbers represent only around 0.1% of UK websites, and 99.9% could remain at risk of being lost forever.
- Where permissions-based harvesting is impractical, the legal deposit libraries would 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. If this was offered on a payment or subscription basis, it would not be feasible for the Government or legal deposit libraries to pay for every copy for archiving. This is 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.
- It would be inevitable that some material, despite being specially selected for its importance and research value, would not be archived because rights holders were unwilling or unable to give permission.
- A court might find that the legal deposit libraries cannot rely upon permissions given by a publisher - for example where a third party rights holder did not give specific permission.
- In respect of works deposited voluntarily (as opposed to being provided under the obligation of regulations), a person who had been defamed in archived material may have cause for claim against a deposit library as its continued availability to readers may perpetuate the defamation.

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.

25. The third option comprised of two elements: automated web harvesting under statutory regulation by 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.

26. 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. Acquiring material under the Legal Deposit Libraries Act 2003 also offers legal protections against the risk of defamation claims in respect of archived material.
27. Our main reasons for not selecting Option 3 as the consultation preferred choice were:
- It 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. 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.
  - For works which were deposited voluntarily outside of the regulations, the same risks on copyright protection and defamation would still exist as under option 2.

*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.*

28. In the previous consultation during 2010-11, Option 4 was the preferred option. As in option 3, deposit libraries would harvest any freely available on line content. However, under Option 4 publishers would be statutorily required upon request to make available to the legal deposit libraries any on line content which could not be freely harvested because there was a pay wall or access barrier. The most appropriate method of delivery would be negotiated and agreed between the legal deposit library and the publisher.
29. Our main reasons for not selecting Option 4 as the consultation preferred choice were:
- The requirement to provide non-harvestable content could bring within scope types of material such as databases, for which it was hard to define the cost of delivery. Also, publishers could face repeated *ad hoc* delivery tasks. Therefore, given that the costs to individual publishers could vary significantly, coupled with a lack of feedback on costs during the consultation period and generally negative feedback from publishers, the Government considered that there was not sufficient evidence to show that this option did not impose a disproportionate burden to publishers when depositing non-harvestable content.

## **Response to the consultation and development of the final preferred option**

30. The overall response to the public consultation between February and May 2012 was one of general support for the principle of non-print legal deposit and the majority of respondents were either supportive or acquiescent of the draft regulations, though a number of minor issues and suggested improvements were raised for our consideration.
31. The consultation had included various questions about the impact of the proposed regulations on publishers and deposit libraries, and in particular sought feedback on the accuracy of estimated costs. Specifically, further information was sought on:
- the cost of depositing in print and the potential savings in switching to non-print deposit;
  - whether publishers who produce the same works in print and non-print format would seek an agreement to deliver those works in the non-print format rather than the print format as currently required, and if so to set out the cost and saving implications;

- the estimated administrative costs for providing relevant login details to allow web harvesting by a deposit library of on line non-print works with access restrictions;
  - the cost of delivering on line non-print works by an alternative method of delivery;
  - whether deposit libraries agreed that the description of the impact on deposit libraries as set out in the options stage impact assessments was accurate.
32. However we received only a limited amount of feedback in these areas, and in the small number of instances where figures were provided we did not consider that it was possible to assume these figures would be applicable across the sector as a whole. Therefore we considered that there was insufficient basis for revising assumptions and figures in the on line impact assessment, other than the following point on micro-businesses.
33. A number of consultation questions focused on the impact of the proposals on publishers. While these did not yield any significant new evidence to inform our impact assessments, the final stage impact assessments essentially confirm the position that the regulations are a net 'out' in OIOO terms. This position also meets the condition set under the Legal Deposit Libraries Act 2003 that the costs likely to be incurred by publishers must not be disproportionate to the benefit of the public arising from the regulations.
34. At the point of obtaining cabinet clearance to consult, it was agreed that we would propose to proceed with the full set of non-print legal deposit regulations to commence in April 2013 but with micro-businesses exempt from some elements during the moratorium period. This position was reached after production of the consultation stage impact assessment and therefore has a bearing on the impact figures for the final proposal. The figures in the consultation stage impact assessment included calculations of the costs for micro-businesses – these have been taken out for figures in relation to financial year 2013-14 in this final stage impact assessment.
35. Under the cross-government moratorium on new domestic regulation on micro-businesses until April 2014, we are proposing an exemption during 2013-14 for micro-businesses in respect of the non-print legal deposit regulations, except the following measures which place no mandatory burden on publishers:
- regulation 18(1) allowing publishers, if they wish, to switch from providing a deposit library with a print version (the current obligation) to providing a non-print version of the same work;
  - regulation 21 allowing publishers, if they wish, to choose to send their web-based content to a deposit library;
  - regulations 17(3) and 23(3) allowing deposit libraries simply to copy freely available on line work from the internet, which will lead to no cost or obligation on publishers.
36. Over 80% of publishing organisations in the UK are micro-businesses but their output accounts for a smaller percentage of the total deposited publications. It is estimated that 38% of books, 13% of newspapers and 19% of periodicals are published by micro-businesses.
37. Were there to be further delays in the inclusion of micro-businesses under the regulations, there would be a significant growing gap in the preservation of British cultural heritage.
38. Having considered the consultation responses, we have decided to proceed with Option 5 from the consultation stage as the preferred option as our final proposal, subject to the exclusion in financial year 2013-14 of microbusinesses from any elements of regulatory

burden that are implied. This refined option represents the final preferred option, and **therefore we have now proceeded to a final proposal stage impact assessment**. The following section presents an appraisal of the final preferred option, following the methodology set out in the most recent consultation document, but making adjustments as appropriate to take account of the fact micro businesses are now excluded in 2013-14 from all aspects of the proposed regulation that could potentially impose a burden.

## Costs and benefits of the final preferred option

### Proportionality

39. There is a high level of interest and sensitivity surrounding aspects of this policy for publishers and legal deposit libraries, though wider public interest remains limited. There is now general agreement or acceptance for non-print depositing, with publishers and legal deposit libraries having differing views on the legal deposit libraries' long-term use of out-of-copyright works. Publishers are also sensitive to the risk of a security breach or copyright infringement of material under legal deposit, though a working group of publisher and legal deposit library representatives are working towards mutually agreeable arrangements for security measures.
40. Legal deposit arrangements have been in place for around 300 years and it is considered a permanent scheme, but there is no constraint on future legislative amendment. The policy is therefore not irreversible. It should, however, be noted that a failure to act could mean the permanent loss of published heritage. These points support an impact assessment that take account of all impacts in as detailed a way as is possible, without commissioning substantial and costly primary research.
41. A significant amount of work had already gone into planning for these proposals in the two previous consultations. These took place from the beginning of March 2010, and there was also feedback and advice received from LDAP during the intervening years after the Legal Deposit Libraries Act 2003. For this reason, we considered it sufficient to seek advice and feedback on certain aspects of data gathered in the two previous consultations rather than to conduct fresh research.

### Methodology

42. The costs and benefits of harvesting and depositing for legal deposit libraries and publishers have been expressed in financial terms following the standard cross-government 'one-in-one-out' criteria. For publishers there are quantifiable costs involved in enabling access for a web harvester to visit a restricted site, or for delivering material by an agreed alternative method. These can be balanced against costs of existing print depositing, where switching to non-print depositing is possible. For legal deposit libraries, there are also quantifiable costs of maintaining archives, quality assurance and staffing etc.
43. Our assessments have focused highly on the effect on business. This is partly because previous consultations were considered overly burdensome (and the policy could not proceed on that basis), and partly because of the increased need to protect businesses in the current difficult financial climate. Our figures exclude costs to micro businesses for financial year 2013-14 only as they are exempt from any obligations under the proposed regulations..
44. We have provided qualitative feedback on the benefits to society, as these are difficult to quantify in a meaningful way with reference to the existing research on the benefits of

maintaining published heritage. The legal deposit scheme is primarily of benefit as a historical research tool and in terms of the benefit to society of a shared cultural heritage. A fit for purpose legal deposit scheme is also part of our international commitments and reputation. Therefore the true value of this scheme can only be properly assessed by future generations.

45. The methodology used to appraise the final preferred option is identical to the methodology presented in the consultation stage impact assessments. The results of the analysis for the final preferred option do, of course, differ from consultation Option 5 due to the exclusion of microbusinesses from all measures in financial year 2013-14 except those placing no mandatory burden on publishers. The adjustment to take account of microbusinesses has been made in all relevant cases on the basis of ONS data on the number of publishers, split by number of employees and type of publication. This data is discussed in more detail in paragraph 48 below.
46. The impact assessment presents costs and benefits in present values, unless otherwise specified, discounted at the Green Book guidance rate of 3.50% per annum. The appraisal period is set at the Green Book guidance length of ten years.

## Assessment of Costs

47. There are two areas of cost that need to be considered. There will be costs to publishers from complying with the new regulations. There will also be costs for the Legal Deposit Libraries as they increase the remit of their collections. This section presents and explains an assessment of these costs.

### Costs to publishers

48. There are two main costs to publishers in complying with the preferred option: initial transition set up costs associated with adapting IT systems for compatibility; and ongoing running costs that occur as on line works are deposited. These impacts are monetised by assessing the number of businesses affected, combined with unit transition and ongoing costs. This requires an understanding of the number of businesses, publications per business, and the aforementioned unit costs. These are set out below.
49. Number of publishing organisations. 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 in their Activity Size and Location data<sup>11</sup>.

Table 2: Number of businesses by size and type of publication

Business size	Book	Newspaper	Periodical	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 ( 50-250 )	50	12	93	155
Large ( 250+ )	15	23	37	75
Total	2,480	477	2,277	5,234

<sup>11</sup> <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-50982> , <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-50986> , <http://www.ons.gov.uk/ons/rel/bus-register/uk-business/2009/index.html>

50. It must be acknowledged that the figures in this table may exclude other types of organisation such as universities, trade associations, professional bodies or research organisations who also publish as a secondary activity, unless their publishing activity is registered as a separate business. Whilst this means that there may be uncertainty over the accuracy of the above figures, the figures in the table are the most accurate available to us, and 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 it is reasonable to take the numbers in this table as a basis for calculations.

51. Number of publications. The British Library provided an estimate of the average number of publications that are expected to be deposited by publishers of different size and publication interests, on the basis of items that have been deposited in the British Library over a calendar year. This is set out in the table below.

Table 3: Average number of publications by business size and type of publication

<b>Business size</b>	<b>Book</b>	<b>Newspaper</b>	<b>Periodical</b>
Micro ( 1 to 9 )	20	50	30
< 20 ( 10 to 19 )	40	100	60
Small ( 20 to 49 )	100	250	150
Medium ( 50-250 )	500	500	750
Large ( 250+ )	2,320	4,950	2,970

52. Size of harvesting target. Using data on the number of print publications deposited at the British Library and ONS data in the above table 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. The output of this calculation is presented in paragraphs 54-56 below to illustrate how the number of publications deposited is expected to grow over the appraisal period.

53. In Year 1, approximately 60,000 to 80,000 publications (monographs and serial parts) would be harvested or deposited by mutual agreement, processed and archived.

54. By Year 5, 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).

55. By Year 10, approximately 220,000 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).

56. Cost of depositing. Based upon a survey carried out by the Publishers Association in support of the earlier impact assessment, we estimate that the publisher's average administrative burden for depositing on line content will typically be between £3 and £6.50 per deposit, with an initial setup cost for procedures of between £1,300 and £2,000 per publisher, although there may be significant variations between individual publishers. Combining the number of publishers with the initial setup costs, and the size of harvesting target with costs per deposit creates an estimate of the burden that the preferred option will place on business.

*Table 4: Costs to publishing businesses*

PV Business cost / £m (2009 prices)	Year 1		Year 5		Year 10		Total	
	Low	High	Low	High	Low	High	Low	High
Transaction cost	0.13	0.40	0.28	0.85	0.45	1.34	2.93	8.82
Setup cost	0.12	0.24	0.15	0.30	0.25	0.51	1.93	4.02
Total cost <sup>12</sup>	0.25	0.64	0.43	1.16	0.69	1.85	4.86	12.84

57. The overall burden for web harvesting or deposit by mutual agreement is likely to start in the first year at between £0.1m and £0.4m for the transaction costs, increasing in later years as microbusinesses enter the legislation and more publications are deposited. In year 5 the transaction costs would be between £0.4m and £1.2m and in year 10 they should reach a “steady state” of between £0.7m and £1.9m per annum.

58. Publisher 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 publisher setup costs over the whole of the next ten years will be between £1.9m and £4.0m.

59. Therefore the total administrative burden for publishers over the entire appraisal period of on line non-print deposit is likely to be between £4.9m and £12.8m.

60. It is also likely that the administrative burden for on line non-print deposit will be more than offset by savings in the total administrative burden for print deposit where publishers who make the same work available in both print and non-print media agree with deposit libraries to switch to non-print deposit. Over time, the number of printed books, papers and periodicals being deposited should reduce, as publishers agree with the legal deposit libraries to deposit the non-print versions instead. This benefit is monetised separately below but is a logical consequence of the set up costs established above; once the publisher has incurred the setup costs they have the technology in place to submit publications in non-print rather than print form.

61. Under the proposed regulations, access to deposited non-print material will be limited to one computer terminal within each deposit library at any one time, and where publishers can demonstrate that access to deposited non-print material would conflict with normal exploitation of the work and prejudice commercial interests, the publisher may request a temporary embargos on access to that material. 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.

62. Consultation respondents considered that the scale of administrative costs might depend on:

- whether the process for providing relevant login details for web harvesting would differ from provision for other customers;
- the effect of web harvesting on bandwidth use and server performance, depending on timing and frequency of requests (if an issue there could be costs attached to upgrading IT infrastructure);
- whether work would be needed in some cases to prevent access to areas containing personal or confidential data.

63. Only one publisher provided any figures, which estimated that set up costs would be potentially slightly higher than the current estimate in the impact assessment. However,

<sup>12</sup> Totals may not sum due to rounding.

they believed there would be potentially greater development and testing costs if web harvesting software disregarded permissions files relating to what can be accessed on the targeted website.

64. 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.

### Costs to Legal Deposit Libraries

65. The final preferred option will cause costs to arise in the public sector as well as imposing a cost on business. Similarly to businesses, there are two types of costs to Legal Deposit Libraries associated with harvesting. There are initial set up costs associated with building the harvesting system, and there are ongoing costs associated with running and maintenance of the system to collect on line publications. The British Library has provided detailed cost estimates for the proposal. These are detailed below.

66. System setup costs. Construction and installation of the system is estimated by the British Library (who ran estimates past the Legal Deposit Advisory Panel) to cost between £0.7m and £1.0m in constant prices for the first three years of operation. These costs comprise of systems development project costs such as programming the harvester to take content from behind paywalls, and setting up systems for operating access restrictions within the Legal Deposit Libraries. The system is expected to be fully operational from year 1 of the scheme, but continued investment will be required as capacity expands rapidly to meet future demand. The total present value of these transitional costs is therefore in the range of £2.1m and £2.9m over the appraisal period.

67. Costs of on going harvesting and archiving. The deposit libraries plan to copy relevant UK publications from the open web for archiving, by means of an automated web harvester. This will include archiving all UK websites on a regular, annual basis—akin to taking landscape ‘snapshot’ photographs of the whole UK domain. As the UK domain consists of many millions of websites, this is a substantial exercise which it is thought will only be affordable on the basis of a highly automated process once or twice a year.

68. The harvesting software will be programmed to identify and take a copy of relevant websites and materials, in accordance with the regulations and technical processes that the Government set out for consultation. Quality assurance will be carried out, to ensure that relevant websites and material have been recorded properly and can be viewed successfully, and that no out of scope material is archived. This will be done with automated systems and tools wherever possible, and on a sampling basis for most of the material being archived.

69. However the material in some websites changes more rapidly than twice a year, for example in response to significant events or themes, and would need additional archiving ‘snapshots’. Certain other websites might be of particular interest to future researchers,

meriting additional quality assurance to ensure that these, in particular, have been properly archived. Curators will be needed to satisfy these requirements by identifying and selecting appropriate websites, by programming the harvesting software to visit the website and record new material at appropriate intervals (perhaps monthly, weekly, daily or even hourly), by carrying out additional quality checks and perhaps by adding extra descriptive metadata and catalogue information about the content. In contrast to the wide-angle landscape snapshots of the whole UK domain, this may be likened to zooming in for additional time-lapse photography of particular subjects.

70. Each new ‘snapshot’ (or zoomed-in photograph) adds more material to be securely stored. The deposit libraries plan to ingest all harvested material into a shared technical infrastructure in which copies of the material are distributed amongst four nodes in London, Yorkshire, Aberystwyth and Edinburgh. This geographical separation between the nodes ensures that a major catastrophe in one location should not affect the others. An automated and continuous error-checking system also ensures that any data corruption or failure of the copy in one node can be identified and corrected from the copies in other nodes. As magnetic and optical storage systems can also degrade over time, the hardware must be constantly renewed and copies migrated from old to new storage media.
71. The deposit libraries must also ensure that the contents of the archive can still be viewed and used by future generations, perhaps several hundred years from now. Not only must the material be securely stored, but a preservation strategy of active interventions is needed to ensure that the material remains compatible with future technologies and software applications. For instance, upgraded copies of the content might need to be made for new or more up-to-date viewing systems, or software might have to be designed in future to emulate older systems, so that the contents can still be read. The deposit libraries will implement different preservation strategies for each type of content according to need and perceived best practice at the time.
72. Therefore the full ‘lifetime’ costs of acquiring, preserving and guaranteeing continuity of access to a digital publication may amount to much more than its face value or the costs of depositing a copy. The LIFE project (Lifecycle Information For E-literature), a collaboration between the British Library and University College London, funded by the Joint Information Systems Committee and the Research Information Network, has developed a methodology for assessing these costs, potentially in future comparing them with the overall ‘lifetime’ costs of preserving printed publications.
73. The British Library has provided estimates of the on going harvesting and archiving. There are three main cost areas: web harvesting of on line content, web harvesting of e-publications, and infrastructure operating costs. These cost estimates are presented in Table 5 below.

*Table 5: ongoing harvesting and archiving costs for Legal Deposit Libraries*

PV Public cost / £m (2009 prices)	Year 1		Year 5		Year 10		10 year total	
	Low	High	Low	High	Low	High	Low	High
Web harvesting	0.71	0.98	1.14	1.59	0.97	1.35	10.13	14.07
e-publication harvesting	0.60	0.84	0.86	1.20	0.77	1.07	7.76	10.78
Infrastructure maintenance	0.32	0.44	0.65	0.91	0.58	0.81	5.56	7.72
Total	1.63	2.26	2.66	3.69	2.32	3.22	23.45	32.57

74. Web harvesting costs are based on the labour costs associated with curatorial selection and the acquisition of permissions, both in the British Library and other Legal Deposit Libraries. They also take account of information storage costs associated with the



archiving process. Both of these costs increase over the period as Table 4 demonstrates, accounting for increased levels of activity as the scheme expands. The labour costs of web harvesting have been calculated on the basis of an assumption about the number of full time equivalent (FTE) staff members at different pay scale grades that will be required to perform the necessary tasks, combined with an average salary cost for the British Library for each different pay scale grade. The information storage costs are based on units of information that will be acquired, based on number of UK registered domains, websites harvested, and the average size of each harvest. This information is combined with a standard cost per terabyte of £776, which declines at a rate of 20% per annum to reflect the trend for disk storage space. A sensitivity of -10%/+25% has been applied to all costs estimates to create the range presented.

75. E-publication costs are based on the labour costs associated with acquisition, claims, and liaison with publishers, along with validation and metadata processing, both in the British Library and other Legal Deposit Libraries. They also take account of information storage costs associated with the archiving process. Both of these costs increase over the period as Table 4 demonstrates, accounting for increased levels of activity as the scheme expands. The labour costs of web harvesting have been calculated on the basis of an assumption about the number of full time equivalent (FTE) staff members at different pay scale grades that will be required to perform the necessary tasks, combined with an average salary cost for the British Library for each different pay scale grade. The information storage costs are based on units of information that will be acquired, based on number of publications submitted, and the average size of each publication. This information is combined with a standard cost per terabyte of £776, which declines at a rate of 20% per annum to reflect the trend for disk storage space. A sensitivity of -10%/+25% has been applied to all costs estimates to create the range presented.

76. Infrastructure maintenance costs take account of preservation, security, discovery, and access functions. These costs have been estimated on the basis of an assumption about the number of full time equivalent (FTE) staff members at different pay scale grades that will be required to perform the necessary tasks, combined with an average salary cost for the British Library for each different pay scale grade. Estimates of system upgrades have also been included. A sensitivity of -10%/+25% has been applied to the initial estimate to create the range.

77. Potential impact on other free-to-access sites. 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.

78. Therefore all material archived through legal deposit 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:-

- Each deposited work may only be viewed by authorised readers 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 copies for specified purposes under the regulations such as preservation, but not in order to increase access.

## Assessment of benefits

79. There are a number of benefits that are anticipated as a result of the preferred final option. Publishers are expected to enjoy efficiencies from the option to submit publications in non-print format that would otherwise have had to be submitted in print form. These savings are monetised. There are a number of benefits for the Digital Deposit Libraries, and wider society. It is difficult to monetise these impacts, but there are discussed qualitatively.

### Benefits to publishers

80. Publishers will benefit from the new regulations as they will no longer need to submit hard copies of publications which are substantially the same as a non-print version and therefore have the potential to make efficiency savings. The total saving to publishers (with a one-year lag before benefits begin to be realised) is estimated to be £0.6m-£0.9m in Year 2, rising to £1.23m-£1.7m in Year 5, and £1.9m to £2.6m in Year 10 as micro businesses enter the regulation and the number of publications submitted increases. Total savings across the appraisal period are estimated to be in the range of £11.8m and £16.5m. These estimates have been created using the following methodology.

81. 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. This figure of £53m 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 we recognise that £53m was not likely to be a fully accurate figure. 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 £10.6m (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 2011 by DCMS which also indicated that £53m is likely to be too high.

82. The consultation questionnaire sought feedback on the cost of print deposit. There were only a handful of responses to this question which yielded some very wide ranging figures (varying by type of publication) and illustrated the breadth of the publishing sector. Figures supplied for newspapers and journals suggested a lower unit cost than the current generic estimate in the impact assessment, while those supplied for books were notably higher, but there was insufficient data provided in the responses to take a whole sector view on the cost of depositing works in print.

83. 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 transaction cost of between £3.00 and £6.50 for depositing one copy – which the legal deposit libraries would then share – of the same publication in non-print form.

84. We have then made three further assumptions with guidance from the British Library to ensure realistic and conservative calculation of 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 our preferred option, 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 non-print publications that will be web-harvested or deposited by publishers are also published in print form. This is a higher proportion than we assumed in the earlier impact assessment 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.
85. These savings to businesses can be directly offset against the costs to businesses identified previously, because the ability of publishers to deposit works on line that they would otherwise have had to deposit in print is a function of the installation and maintenance of systems to allow for the harvesting of on line material. The net impact on business is therefore an important consideration and is discussed in the conclusions below.
86. In certain cases, there may be additional savings to publishers in that legal deposit libraries can carry out archiving activities on their behalf. The costs of individual archives and the benefits of alternative provision are likely to vary significantly amongst publishers, and we have not attempted to quantify these benefits.

### Benefits to Legal Deposit Libraries

87. The benefits to deposit libraries mainly relate to being able to harvest systematically producing a single archive of non-print material and the potential savings that can be made from no longer needing to process a proportion of print deposits. It is expected that the long-term costs of archiving and storing non-print deposit will be less than the costs for print deposit; not least because the need for legal deposit libraries to acquire further buildings would be higher under a print-only deposit scheme. We have received feedback that such long term savings for legal deposit are only likely to occur after the 10 year period considered by this impact assessment, and therefore we have not made an assessment of savings for deposit libraries.

### Benefits to research and scholarship

88. 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.

89. Non-print depositing also enables legal deposit libraries to potentially offer an improved service to researchers. For example, electronic indexing and searching methods may allow quicker access to deposited works (which would no longer need to be physically retrieved from an archive) and an increased ability to find relevant material without the need to sift through less useful information. Potentially metadata can be interrogated across a large number of documents to allow research that would not be realistically possible on paper; for example it may be possible to search the archive to establish when a new phrase or word became more established in the English language.

### Benefits to the UK

90. 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 British Library and the legal deposit libraries and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them. A non-print legal deposit scheme will also allow the UK to keep pace with other countries; many of whom already have non-print legal deposit schemes in place. *Table 6* below lists countries that have already taken this step.

*Table 6: List of countries that have non-print legal deposit schemes in place*

Andorra	Austria	Belgium
Canada	Chile	China
Czech Republic	Denmark	Estonia
Finland	France	Germany
Hungary	Iceland	Indonesia
Italy	Japan	Kenya
Latvia	Lithuania	Malaysia
Mauritius	Montenegro	New Zealand
Norway	Poland	Romania
Russia	Serbia	Slovakia
Slovenia	South Korea	South Africa
Spain	Sweden	Thailand
USA	Vietnam	

### **Aggregate impact of costs and benefits**

91. Having set out and assessed, monetising wherever possible, a number of different impacts on both the cost and benefit side that are likely to result from implementation of the preferred policy option, it is necessary to examine the overall position of the preferred policy option. This is set out in *Table 7* below, which takes the midpoint of ranges presented in the previous analytical sections as the central estimate, and rounds the results of the analysis to one decimal place.

*Table 7: Distribution of monetised costs and benefits between key stakeholders*

Present value costs	Total Cost	..of which to Publishers	...of which to Libraries
Low	30.4	4.9	25.5

High	48.3	12.8	35.4
<b>Best Estimate</b>	<b>39.3</b>	<b>8.9</b>	<b>30.5</b>
<b>Present value benefits</b>	<b>Total Benefit</b>	<b>...of which to Publishers</b>	<b>...of which to Libraries</b>
Low	11.8	11.8	0.0
High	16.5	16.5	0.0
<b>Best Estimate</b>	<b>14.1</b>	<b>14.1</b>	<b>0.0</b>
<b>Net present value<sup>13</sup></b>	<b>Total NPV</b>	<b>...of which to Publishers</b>	<b>...of which to Libraries</b>
High	-18.5	-7.0	-25.5
Low	-31.8	-3.6	-35.4
<b>Best Estimate</b>	<b>-25.2</b>	<b>-5.3</b>	<b>-30.5</b>

92. The overall NPV of the final preferred policy option is £-25.2m, within a range of £-18.5m-£-31.8.9m. This indicates that the policy is overall a net cost to society. This estimate only takes account of monetised impacts, and therefore does not take account of the wider benefits around published heritage for which it is only feasible to provide a qualitative benefit assessment.

93. This position is predominantly driven by net costs that accrue to the public sector, in the form of Legal Deposit Libraries that have to implement systems to collect and maintain on line content. This NPV for the public sector is estimated to be £-30.5m, within a range of £-25.5m-£-35.4m.

94. There is also a cost burden imposed on publishing businesses, but this is outweighed by benefits that also accrue to businesses as a result of the policy intervention. The business NPV is estimated to be £5.3m, in the range of £3.6m-£7.0m.

95. The business NPV is a measure of the burden that is imposed on business as a result of a regulatory intervention. The primary measure of the burden that is imposed on business, however, the equivalent annual net cost to business (EANCB). This is equivalent to the undiscounted flow of costs and benefits to business divided by the annuity rate. This is estimated to be £-0.8m, within a range of £-0.6m-£-1.1m. The negative nature of the EANCB indicates that the proposal is a regulatory “OUT” – it reduces the regulatory burden that government imposes on businesses. This makes intuitive sense: while there are aspects of the proposal that are a regulatory “IN” (from compliance with the deposit of on line materials), there are a greater weight of regulatory “OUT” (from facilitating easier compliance with existing deposit commitments). Given that these two aspects of the proposal are interlinked since they are both based on publisher implementation of IT systems, it is appropriate to consider both effects together as an overall regulatory “OUT”.

96. The policy proposal excludes micro businesses in financial year 2013-14 from all aspects of regulation that directly impose a cost on business, and this is reflected in the assessment of impacts presented above. Analysis of micro businesses alone supports this decision. The lower publication rate of micro businesses means that their recovery of initial setup costs and transaction costs from digital deposit of print publications is much slower than for larger businesses. Across a ten year appraisal period, therefore, the potential business benefits from the preferred option do not outweigh the costs of increased legal deposit obligations. For microbusinesses alone the EANCB is estimated to be £0.1m, within a range of £-0.0-£0.2m. The policy proposal would therefore represent an IN for microbusinesses in the best estimate, although in the low scenario a very small net benefit OUT is possible. This assessment is consistent with their exclusion from the policy proposal during the moratorium period.

<sup>13</sup> Totals may not sum due to rounding.

97. The Equivalent Annual Net Cost to Business (EANCB) for micro-businesses depositing on line content is estimated to be £0.1m (see 'Aggregate impact of costs and benefits' section below). This figure divided by the 4,346 UK publishers classified as micro-businesses (see Table 2 below) indicates a best estimate of the EANCB per micro-business depositing on line content as £27. This metric indicates that when micro-businesses do enter into the legislative framework following the moratorium, each business will on average only bear a very small cost.

## Risks and assumptions

98. Most of the consultation stage risks were associated (a) with the lack of a comprehensive collection of on line publications and (b) with the financial implications for each option.

99. However, for Option 2, Option 3 and Option 4 at consultation stage there was also an additional major risk for any voluntary option: the lack of statutory protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel. 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. 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. These risks are resolved through the selection of option 5 as the chosen final option.

## Description of implementation plan

100. Our intention is to introduce the regulations for the April 2013 common commencement date, for the option of statutory regulation allowing for web harvesting of both freely available and access-restricted on line content with, in addition, alternative delivery of content by agreement if publishers prefer. Deposit libraries would implement the new scheme from April 2013, and are in the meantime working together with publisher representatives on mutually agreeable arrangements. We would expect legal deposit libraries to continually review the success of legal deposit arrangements, together with publishers, through regular meetings of the Joint Committee on Legal Deposit or any other suitable forum.

101. A post implementation review would be due within 5 years.

## Specific Impact Tests

### Economic and financial

102. The economic and financial implications of the policy proposal have been dealt with in terms of costs to Legal Deposit Libraries and costs and benefits to publishing businesses. Further

economic and financial impacts are not anticipated. Competition impacts, in particular, are not expected to arise. Businesses benefit overall from the proposal. As paragraph 97 outlines, microbusinesses could potentially suffer a small financial disadvantage under the proposal, but will be exempt from new burdens in financial year 2013-14.. The EANCB that has been estimated at £-0.8m is, however, very small compared to the aggregate size of the publishing industry which is estimated in official statistics to be worth approximately £11.6bn per annum in gross value added terms<sup>14</sup>. The proposal is therefore expected to have no material effect on competition within the publishing market.

### Social

103. Social impacts around the benefits of maintaining published heritage for society in terms of Legal Deposit Libraries, research and scholarship, and wider UK benefits have been discussed qualitatively. It is not anticipated that there are further social impacts, and certainly no detrimental effects on age, gender, ethnic background, or the rural environment.

### Environmental

104. There is likely to be a marginal environmental impact of the regulations. For instance, where the option for publishers to switch to electronic depositing could mean a minor reduction in the need for the produce and delivery of paper copies, and be less energy intensive. On the other hand, an opposing effect may also be increased electricity usage by Legal Deposit Libraries as more servers are needed for electronic depositing. Due to the very minimal level of both the individual and net effects, we have not attempted to quantify the environmental effects.

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<sup>14</sup> DCMS (2011), Creative Industries Economic Estimates, London

## 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 described below. If there is no plan to do a PIR please provide reasons below.

### **Basis of the review :**

Within 5 years of the date the regulations come into force the Secretary of State must carry out a review of the regulations, set out the conclusions of the review in a report, and publish the report

### **Review objectives :**

To assess the extent to which the objectives intended to be achieved by the non-print legal deposit system established by these regulations has been achieved.

To assess whether those objectives are appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

### **Review approach and rationale :**

We will assess the number of non-print works deposited, against the estimated number of overall publications which may be subject to legal deposit. Qualitative and quantitative data will also be sought from publishers and legal deposit libraries on the effect of non-print legal deposit; potentially through the Joint Committee on Legal Deposit (a working group of legal deposit library and publisher representatives), the Joint Information Systems Committee, or other similar working groups which may exist at that point.

### **Baseline :**

There is currently no scheme in place for depositing on line works.

### **Success criteria :**

JCLD to evaluate success against policy objectives through production of a report by March 2017 at the latest.

### **Monitoring information arrangements :**

We will ask the Joint Committee on Legal Deposit to provide annual updates on the level of depositing (including print, on line and off line works) and to comment on the accuracy of our estimated costs of the scheme on an annual basis.

### **Reasons for not planning a review:**

Not applicable