

Title: Regulation for the legal deposit of UK off line publications IA No: DCMS004 Lead department or agency: Department for Culture, Media and Sport Other departments or agencies: NA	Impact Assessment (IA)		
	Date: 20/06/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Daniel Halpern 02072116919			
Summary: Intervention and Options			RPC Opinion: 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?
£0.32m	£0.13m	£0.01m	YES IN

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 off line content. Where there is a small net cost in the off line impact assessment, this is offset by a larger net benefit in the on line impact assessment (DCMS006).

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) – under the framework of the Legal Deposit Libraries Act 2003, regulations would oblige publishers to deposit, free of charge, one copy of their off line publications with the British Library and upon request, up to five additional copies for the remaining legal deposit libraries, on the same basis as the legal deposit of printed publications under the 2003 Act. This option meets the policy objective whilst only imposing a minimal burden on publishing businesses.

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.	Micro YES	< 20 YES	Small YES	Medium YES	Large YES
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA		Non-traded: NA

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

Preferred Policy Option

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2009	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.23	High: -0.41	Best Estimate: -0.32

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	0	0.03
High	NA	0	0.05
Best Estimate	NA	0	0.04

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

Costs to publishing businesses from compliance with off line legal deposit regulations. These are estimated by applying a unit cost per publication derived from the Legal Deposit Advisory Panel recommendations to a British Library estimate of off line works to be deposited, and amount to present value costs of £0.10m. Costs to Legal Deposit Libraries from additional curatorial and archiving activities. These are estimated with guidance from the Lifecycle Information For E-literature project, in conjunction with advice from the British Library, and amount to present value costs of £0.16m.

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	NA	0	0.00
High	NA	0	0.00
Best Estimate	NA	0	0.00

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

No monetised benefits are identified.

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

Libraries will be able to harvest systematically, producing a single archive of the nation's off 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.

Key assumptions/sensitivities/risks	Discount rate (%)	3.50%
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 from any obligations regarding off line publications in the regulations in financial year 2013-14 only.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0.02 Benefits: 0.00 Net: 0.01	YES	IN

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")
 - National Library of Wales ("NLW")
 - National Library of Scotland ("NLS").¹
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 puts forward a proposal for addressing non-print legal deposit in the UK, in relation to non-print (digital) content which is made available to the public for viewing off line.

¹ 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. A public consultation exercise was undertaken at the end of 2009 on the Panel's recommendations.² In Spring 2010 LDAP submitted recommendations on UK commercial and protected on line publications. This led to a second consultation³, 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 2012⁴ 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 society⁵.
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. The majority of these non-print works are available on line. A more limited amount of non-print works such as encyclopaedias on DVDs may be ordered off line, and other off line works may be emailed to subscribers as opposed to being directly accessed or downloaded

² http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference_library/consultations/6506.aspx

³ <http://www.culture.gov.uk/consultations/7449.aspx>

⁴ <http://www.culture.gov.uk/consultations/8878.aspx>

⁵ British Library (2004), *Measuring Our Value*, London: British Library - www.bl.uk/pdf/measuring.pdf

from a website. Failing to capture this off line non-print aspect of our published heritage would result in an uncorrected market failure. Government should intervene to avoid this societal loss.

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 off line publications discussed in this impact assessment is one part of a linked proposal. Proposals for the legal deposit of on line publications go hand in hand with this proposal and provide an overall impact 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 off line publications should be viewed alongside the impact assessment for on line publications⁶.

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 two previous public consultations noted in paragraph 5⁷, the DCMS ran a new consultation between February and May 2012.⁸ 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 4 (*Statutory regulation under the framework of the Legal Deposit Libraries Act 2003*)
15. This option would oblige publishers to deposit, free of charge, one copy of their off line publications with the British Library and upon request, up to five additional copies for the remaining legal deposit libraries, on the same basis as the legal deposit of printed

⁶ The "IA No" for the on line component of this regulatory package is DCMS006.

⁷

http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference_library/consultations/6506.aspx

⁸ <http://www.culture.gov.uk/consultations/7449.aspx>

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

publications under the 2003 Act.

16. Our main reasons for putting forward Option 4 as the preferred option were:

- Statutory depositing of off line material is the most beneficial of the four options in maintaining the policy objectives set out in paragraph 10 and would do more than options 1 to 3 (summarised on pages 6-8) to achieve a comparable scheme to print publications, reducing the risk of a 'digital black hole' in our national records and archives. It will entitle deposit libraries to receive non-print off line publications, rather than according to whether or not the publisher is willing to deposit it.
- Statutory depositing would provide protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.
- Although publishers will be required in some cases to deposit publications which they might otherwise have chosen not to deposit, the effect on publishers has been limited in the regulations through the inclusion of clauses to request temporary embargoes against availability of the work at legal deposit libraries, and restrictions on the accessing and use of deposited works.

17. The choice of Option 4 as the preferred option at consultation was supported with an assessment of the economic and financial impacts of policy alternatives. This analysis is presented in a summary Table 1 below. Option 4 imposes a cost on society that is greater than the other alternative options, but this cost is commensurate with adequately meeting the policy objectives and does not take into account the unquantified benefits to society from the preservation of this off line aspect of published heritage. These economic and financial impacts as estimated at consultation stage are not adjusted to take account of the moratorium on micro businesses.

Table 1: Consultation stage impact assessment

Policy Option	Total NPV / £m (2009 prices)	Business NPV / £m (2009 prices)	Public NPV / £m (2009 prices)
Option 1	1.59	0.60	0.99
Option 2	0.84	0.25	0.59
Option 3	0.00	0.00	0.00
Option 4	-0.33	-0.13	-0.20

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

Option 1: Rely on publisher archiving

19. Under this option the legal deposit libraries would not seek to build a central archive of works published in non-print (digital) format, and the nation would rely entirely upon the private sector. Publishers would retain copies of their own publications specifically for archival purposes, with various access and cost arrangements, resulting in several archives behind multiple commercial barriers.

20. Our main reasons for not selecting option 1 as the preferred choice were:

- There would be no requirement for publishers to deposit. So the option would not meet the objective of ensuring a national archive of non-print publications. The British Library, in consultation with the other Legal Deposit Libraries have estimated that

publishers would deposit 9,862 fewer items than the base case (the current self-regulated voluntary scheme, with active requesting by legal deposit libraries).⁹

- We are not aware of publishers routinely maintaining archives of either print or off line publications which are available to the public; this is unlikely to change in future. Moreover, maintaining such an archive would involve publishers taking on some of the lifecycle costs of a permanent archive. Where a publisher assessed that there was no longer sufficient revenue to be maintained for long-term archiving, there would be a reasonable possibility of the whole archive being deleted or falling into disrepair.
- There would be no legal basis on which researchers could obtain access to the publications if the publisher chose not to create and maintain accessible private archives.
- Under this option cost burdens spread to include other stakeholder groups, namely business and academic researchers; students; educators; and other members of the public. Publisher archiving would fall short of ensuring a comprehensive collection of off line publications. As there would be no obligation to deposit off line publications, the legal deposit libraries would need to purchase publications at a cost to the public. Deposit libraries could not realistically purchase every off line non-print work, and where it was necessary for the public to seek other works directly with publishers they would face a variety of publishers and access arrangements. On top of subscription / access costs, these factors could cost public stakeholders in terms of time, travel, and subsistence.
- In terms of works purchased by deposit libraries, there would be a 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.

Option 2 – Unregulated voluntary code of practice, no active requesting by legal deposit libraries

21. In 2000, representatives from the legal deposit libraries and the publishing trade associations drew up a code of practice for the voluntary deposit of microform and off line publications. This encouraged publishers to deposit with libraries; however, they could choose whether and how to deposit. Under this option the code would become permanent, encouraging publishers to deposit off line and microform publications.

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

- There would be no governance or additional support from industry bodies apart from publicising the code itself.
- The legal deposit libraries would have no mechanism for requesting off line publications that are not deposited. This option was likely to fall far short of providing a comprehensive collection of off line publications. The Legal Deposit Libraries have estimated that 4,151 fewer publications¹⁰ would be published per year than under the current baseline (self-regulated voluntary scheme with active requesting by libraries). Also, it could not be guaranteed that the publications which publishers chose to deposit would be the most beneficial to future users or form part of a coherent offer.
- As with option 1 above, there would also be no protections against third party copyright infringement and other potential legal liability such as libel, and costs.
- There would be no legal basis on which researchers could obtain access to the publications if the publisher chose not to deposit it or to create and maintain accessible private archives.
- The current system in place (Option 3 below) does not place any formal obligations on publishers to deposit publications if they do not wish to do so. From the

⁹ The figure of 9,862 represents publications deposited rather than unique titles, and so counts a single publication deposited six times (one in each Legal Deposit Library).

¹⁰ Of the 9,862 publications currently deposited, 4,151 involved an active request from a Legal Deposit Library.

perspective of Government policy on legal deposit there is no benefit in moving to a less comprehensive scheme, and for publishers any such deregulatory change would be limited in impact.

Option 3 – “Do nothing” and continue with a self-regulated voluntary scheme, with active requesting by legal deposit libraries

23. This option is currently in place and is therefore the baseline “do nothing” option. This option enhances the code of practice for voluntary deposit of microform off line publications in Option 2 by establishing a formal, lasting agreement and governance structure. This would include memoranda of understanding signed by the legal deposit libraries and publishers, a monitoring and annual reporting scheme, and five-yearly reviews both of the effectiveness of the scheme and of the trend in the number of relevant publications. Publishers would be actively encouraged to deposit by their Trade Association representatives; the legal deposit libraries would actively identify relevant publications and request deposit when necessary.
24. Our main reasons for not selecting Option 3 as the preferred choice were:
- This option does not help resolve the issue of a growing gap in the comprehensiveness of our archives and records of the UK’s intellectual and scientific achievements. Publishers would not be legally obliged to deposit any further works than they currently choose to, and recommendations in annual reports on the scheme would not carry any legal powers.
 - We do not consider that this option would in the long term meet our obligations under the UNESCO Charter on the Preservation of the Digital Heritage.
 - As in Option 1 and Option 2, there would be no legal basis on which researchers could obtain access to the publications if publishers did not wish to deposit it or create and maintain accessible private archives.
 - As in Option 1 and Option 2, this approach does not give the legal protections against infringements and liabilities.

Response to the consultation and development of the final preferred option

25. 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. In the consultation responses there was only very limited feedback on issues related to off line depositing only, and we do not consider that sufficient information was received to prompt any change to the policy option preferred at consultation stage.
26. 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.

27. However we received only a very limited amount of feedback in these areas, to the extent that we considered that there was insufficient basis for revising assumptions and figures in the off line impact assessment, other than the following point on micro businesses.
28. 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 on line and off line regulations together are a net “OUT” in “One-In-One-Out” terms, although the off line component of the regulations represents a small “IN”.
29. 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, including any obligations in relation to depositing off line material. 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 of the calculation for financial year 2013-14 only in this final stage impact assessment.
30. 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
31. Therefore micro businesses are fully exempt in 2013-14 from depositing any off line content on a statutory basis. Where they do deposit on a voluntary basis, there would be a lack of statutory protection against third party copyright infringement, licence infringement, and other potential legal liability such as defamation and libel, unless the off line publication was being deposited in agreement with the deposit library as an alternative to a substantially similar print publication.
32. 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.
33. The best estimate of the total cost to publishers of depositing off line content is approximately £13k per annum (see ‘Aggregate impact of costs and benefits’ section below). The source data used for this calculation does not allow us to break down the costs for businesses of different sizes but if this figure were to be spread evenly across the 5,234 UK publishers (see Table 3 below) the resulting Equivalent Annual Net Cost to

Business (EANCB) per micro-business depositing off line content would be as little as £2.50.

34. 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.
35. Having considered the consultation responses, we have decided to proceed with Option 4 from the consultation stage as the preferred option for our final proposal, subject to the exclusion of microbusinesses in 2013-14 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 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 mandatory burden.

Costs and benefits of the final preferred option

Proportionality

36. 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.
37. 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. The impact of on line aspects of the regulations are likely to be much larger than the off line aspects of the regulations. Given this, less detailed analysis is presented in this impact assessment than the accompanying impact assessment for on line regulations.
38. 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

39. The costs and benefits of depositing off line content 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 the processing and return of off line items, while for legal deposit libraries there are costs associated with curatorial, archiving and storage activities.
40. 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 in 2013-14 as they are exempt from any obligations that year under the proposed regulations.
41. 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.
42. 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 4 due to the exclusion of microbusinesses in 2013-14. The adjustment to take account of microbusinesses has been made in all relevant cases on the basis of ONS and British Library data on the number of publishers and publications per publisher, split by size and primary function of business. The data is described in *Table 2* and *Table 3* below. Taking a weighted index of these two data sets combined gives an indication of the proportion of deposits that are likely to be made by micro businesses. This proportion is equal to 22%, and an equivalent adjustment is made to the consultation stage assessment to present an accurate assessment of the policy impact of the final preferred option.

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

Table 3: 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

43. 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 cost impact on publishers

44. The number of additional off line works which will be deposited under this scheme are expected to be very limited given that IT formats such as DVD-ROMs have become increasingly replaced by access to on line publications, and various publishers already deposit off line works on a voluntary basis. Based on British Library data, produced in consultation with other Deposit Libraries we estimate that after the moratorium ends, 2,100 additional publications would be deposited per annum under this scheme. The application of the moratorium on inclusion of micro-businesses reduces the amount of off line publications deposited through the scheme by 22% in 2013-14, as previously explained in paragraph 42. Given the extremely small volume of publications, we expect the overall cost to publishers to be minimal.
45. Costs have been assessed by applying a range of cost estimates to the number of additional publications that are anticipated, derived from LDAP recommendations. The low estimate of cost is £2 per item, while the high estimate of cost is £12 per item. These costs reflect the administrative burden of selecting, submitting, packaging, and transporting off line works to Legal Deposit Libraries. These cost estimates therefore include both labour costs and any materials costs associated with compliance. Question 19 of the consultation questionnaire asked publishers how much it would cost to deliver off line non-print works to a deposit library, whether they currently participate in a voluntary scheme for depositing off line non-print works and if so how the cost of depositing would differ under the regulations. The only response to this question, from a trade association, provided no figures for the cost of depositing off line non-print works such as CD-ROMs, but imagined them to be similar in scale to the figures set out in their answer to the costs of depositing print copies. They noted that many of their members already participate in the voluntary agreement for off line deposit. Applying these costs results in an annual constant prices cost of between £4,261 and £25,564 per annum, although these costs are adjusted down in the first appraisal year to take account of the microbusiness exemption.
46. To ensure that the impact on publishers' business models is kept to a minimum, and that no further costs are incurred by businesses, the regulations include some general provisions about embargoes. These are intended to protect the commercial interests of those publishers who may be unreasonably prejudiced if readers are allowed access to their works in a legal deposit library, albeit on the limited basis prescribed under the draft regulations. Although the possibility of an embargo does not remove the obligation to deposit the publication with a legal deposit library, readers will not be given access for a specified period of time. Further protections for the intellectual property of businesses are conferred by ensuring that
- Archived copies may only be used by authorised readers on the (physical) premises of the legal deposit libraries and may not be made available remotely or on line.
 - Each deposited work may only be used at one terminal at a time in each deposit library.
 - The works must be secured to prevent any unauthorised copying.
 - The legal deposit libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

Assessment of cost impact on Legal Deposit Libraries

47. A cost to Legal Deposit Libraries is based on evidence from Lifecycle Information for E-literature (LIFE) (a Joint Information Systems Committee funded project analysing lifecycle costs for archived publications) which had looked specifically at Voluntary Deposit of Electronic Publications in the British Library off line publications¹¹. This estimates a constant prices cost per annum of £23,394, although this cost is adjusted down in the first appraisal year to take account of the microbusiness exemption. Given that the LDAP considered this issue explicitly, it is not considered necessary to include a sensitivity range around this estimate.

Assessment of wider benefits from legal deposit

48. There are a number of wider benefits that are anticipated as a result of the preferred final option, accruing to Legal Deposit Libraries, research and scholarship, and UK society. It is difficult to monetise these impacts, but there are discussed qualitatively.

Benefits to Legal Deposit Libraries

49. 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 restoring 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 Legal Deposit Libraries.

Benefits to research and scholarship

50. 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.

51. 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

¹¹ <http://eprints.ucl.ac.uk/1854/1/LifeProjMaster.pdf>

52. 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 4* below lists countries that have already taken this step.

Table 4: 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

53. 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 5* 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 two decimal places.

Table 5: Distribution of monetised costs and benefits between key stakeholders¹²

Present value costs	Total Cost	..of which to Publishers	...of which to Libraries
Low	0.23	0.04	0.20
High	0.41	0.21	0.20
Best Estimate	0.32	0.13	0.20
Present value benefits	Total Benefit	...of which to Publishers	...of which to Libraries
Low	0.0	0.0	0.0
High	0.0	0.0	0.0
Best Estimate	0.0	0.0	0.0
Net present value	Total NPV	...of which to Publishers	...of which to Libraries
High	-0.23	-0.04	-0.20
Low	-0.41	-0.21	-0.20
Best Estimate	-0.32	-0.13	-0.20

¹² Totals may not sum due to rounding.

54. The overall NPV of the final preferred policy option is £-0.32m, within a range of £-0.23m-£-0.41m. This indicates that the policy is 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.
55. 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 off line content. This NPV for the public sector is estimated to be £-0.20m.
56. There is also a small cost burden imposed on publishing businesses. The business NPV is estimated to be £-0.13m, in the range of £-0.04m-£0.21m.
57. 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 £0.01m, within a range of £0.00m-£0.02m. The negative nature of the EANCB indicates that the proposal is a regulatory “IN” – it increases the regulatory burden that government imposes on businesses. This makes intuitive sense: costs are imposed on businesses as they comply with the requirement to submit off line works, and there is no counterpoint benefit to business. It is worth noting, however, that if the off line regulations are taken together with the on line regulations that are treated in a separate impact assessment the overall effect is one of reduced regulation on business. This package of both off line and on line measures therefore constitutes an “OUT”.
58. The policy proposal excludes micro businesses from all aspects of off line regulations because these directly impose costs on business, and this is reflected in the assessment of impacts presented above.

Risks and assumptions

59. The major risk identified at consultation for Option 1, Option 2 and Option 3 resulted from the voluntary nature of the regulation: 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 consultation Option 4 as the chosen final option where deposit is statutory.

Description of implementation plan

60. The inclusion of off line publications in the regulations will ensure that the legal deposit libraries and publishers are afforded the legal protection under the Legal Deposit Libraries Act 2003 which offers protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liabilities, such as defamation and libel.
61. By including off line publications in the regulations we will not be significantly increasing the costs to business above those which already occur and a more comprehensive archive of non-print works will be collected. 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.
62. Our intention is to introduce the regulations at the April 2013 common commencement date, at which point deposit libraries would implement the new scheme. A post-implementation review would be due within 5 years.

Specific Impact Tests

Economic and financial

63. 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 incur a cost from the off line proposal, while microbusinesses which could potentially have suffered under the proposal have been excluded during the moratorium period. The EANCB that has been estimated at £0.01m is, however, miniscule 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 terms¹³. The proposal is therefore expected to have no material effect on competition within the publishing market.

Social

64. 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

65. 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, the regulations require a small number of additional off line publications to be deposited. Due to the very minimal level of both the individual and net effects, we have not attempted to quantify the environmental effects.

¹³ 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 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 of on line works.

Success criteria :

Joint Committee on Legal Deposit 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