



Department
for Culture
Media & Sport

Guidance on the Legal Deposit Libraries (Non-Print Works) Regulations 2013

April 2013

Contents

Section 1: Introduction.....	4
Section 2: Exemptions for micro-businesses and new businesses	6
Section 3: Scope of non-print legal deposit	8
Section 4: Summary of the regulations.....	10
Section 5: Collections policy and how delivery will operate in practice.....	15
Section 6: Assessing whether non-print works are within scope of the regulations.....	17
Section 7: Delivery of additional information.....	20
Section 8: Access to deposited works	21
Section 9: Embargoes on deposited works	22
Section 10: Security for deposited works.....	23
Section 11: Permitted activities in relation to deposited works	26
Section 12: Exemptions from liability	28
Section 13: Co-operation and dispute resolution between publishers and deposit libraries .	29
Annex A: Summary of the web harvesting process	31

Section 1: Introduction

- 1.1 This guidance is designed to help publishers and deposit libraries to interpret their obligations under the Legal Deposit Libraries (Non-Print Works) Regulations 2013 and should be read in conjunction with those regulations.
- 1.2 The objective of the regulations is to allow the preservation of non-print publications for future generations. Under the current legal deposit regime every printed work that is published in the UK is deposited with the British Library and, upon request, with five other legal deposit libraries. These regulations extend that regime so that, in addition to printed works, it also covers non-print works, that is, works published in a medium other than print.

Background

- 1.3 The UK's legal deposit regime 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 Legal Deposit Libraries Act 2003 ("the 2003 Act") reaffirmed existing provisions requiring publishers to deposit one copy of every printed publication that is published in the UK with the British Library and, upon request, with each of the five other legal deposit libraries (as follows):
 - British Library
 - Bodleian Library, Oxford
 - University Library, Cambridge
 - Library of Trinity College, Dublin¹
 - National Library of Wales
 - National Library of Scotland²
- 1.4 While there are longstanding arrangements for the legal deposit of printed works, there is now also an established sector of information and creative expression that is produced, distributed, accessed and maintained solely in non-print form.

¹ 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 regime.

² The 2003 Act also confers rights for access to legal works deposited with National Library of Scotland upon the Library of the Faculty of Advocates ("FoA").

- 1.5 The 2003 Act gives the Secretary of State the powers to make secondary legislation to bring digital media within its scope, which allow for the preservation of non-print works.
- 1.6 Between 2005 and 2010, the Legal Deposit Advisory Panel (LDAP), an independent non-departmental public body, advised the Secretary of State on the implementation of regulations under the 2003 Act. Following two public consultations held in 2009-10 and 2010-11 on earlier drafts of the regulations, the Department for Culture, Media and Sport (DCMS) ran a 12 week public consultation between 24 February and 18 May 2012 on revised draft regulations for non-print legal deposit.
- 1.7 The consultation responses broadly welcomed the proposed regulations and the Government response to the consultation issued in September 2012 confirmed the intention to proceed with bringing into force the Legal Deposit Libraries (Non-Print Works) Regulations on the April 2013 common commencement date and that a number of minor amendments would be made to the proposed regulations in response to the consultation.
- 1.8 The Legal Deposit Libraries (Non-Print Works) Regulations came into force on 6 April 2013. The regulations are intended to address the following policy objectives:
 - To ensure a national collection of non-print publications.
 - To enable an efficient system in which material is archived and preserved in the legal deposit libraries.
 - To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders.
 - To facilitate long-term preservation, so that the material may continue to be used in future.
 - 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.

Section 2: Exemptions for micro-businesses and new businesses

- 2.1 In March 2011, the Government announced a three year moratorium on new domestic regulation for micro-businesses and start-ups as part of the Plan for Growth³.
- 2.2 Whilst the impact assessments for the non-print legal deposit regulations show that the combined impact of depositing both on line and off line non-print works will reduce burden on the wider publishing industry, DCMS analysis of the evidence available in 2012 suggested that the combined impact of the regulations would present a small net cost for micro-businesses, averaging £26 per annum.
- 2.3 Therefore, in accordance with the moratorium policy, existing micro-businesses and new businesses are initially exempt from some measures within the regulations which may contribute to this small net cost, specifically:
- the obligation to deliver off line work (physical items such as CD ROMs) to deposit libraries (regulation 15);
 - regulations 16(3) to 16(7), which anticipate that publishers will provide deposit libraries with login details to websites.
- 2.4 Micro-businesses and new businesses are included in three specific measures within the regulations on the basis that they will be at no cost to publishers and offer the opportunity to make savings against their current obligations. These are:
- a measure which allows 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, provided the work is published in both print and non-print formats (regulation 14(1));
 - a measure which allows publishers, if they wish, to choose to send on line work to a deposit library (regulation 16(1) and 16(2)); and
 - measures which allow the deposit libraries to copy freely available on line work from the internet, which will lead to no cost or obligation on publishers (regulation 13(3) and 18(3)).

³ http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

- 2.5 Part 2 of the regulations sets out which businesses are classed as ‘micro-businesses’ and ‘new businesses’. In essence, a micro-business is defined as a business that has fewer than 10 employees and a new business is defined as a business which one or more persons begin to carry on during the exemption period, subject to caveats in relation to any previous business activity.
- 2.6 The partial exemption for micro-businesses and new businesses is for the period ending with 31 March 2014, after which all publishers will be subject to the full scope of the regulations.

Section 3: Scope of non-print legal deposit

3.1 The scope of non-print legal deposit under the regulations is as follows:

Off line work

3.2 A copy of every off line work (i.e. work which is not accessed or delivered by means of the internet and is recorded in a physical form such as a CD ROM, DVD or microform⁴) is required to be delivered to the British Library within one month of publication. The other deposit libraries are entitled to a copy of any off line work which they request. A request must be made within 12 months of publication and delivery must be within one month of publication or the request, whichever the later.

On line work

Delivery by web harvester

3.3 In most cases, the delivery of on line work (i.e. content published on the internet including e-books and e-journals) to deposit libraries will be by means of a web harvesting process. As an alternative to web harvesting, publishers may agree with deposit libraries to deliver on line work by a different method, but this would be a voluntary arrangement and it is expected that most publishers will be content to rely on the deposit libraries' use of web harvesting to meet their delivery obligations. The 'visit' by the web harvester software to the IP address of the website hosting a specified work will constitute a request for that work. The regulations make it mandatory that the delivery of the work in response to the request must be by way of automated response from the website to the web harvester.

3.4 For on line works behind a login facility, the request by the web harvester software to the login page will be deemed to be a request for the on line works behind that page. The obligation on the publisher to deliver works behind a login page by automated response to the web harvester software will still apply. The regulations require the deposit library to give the publisher at least one month's notice before the request by the web harvester software. This will

⁴ Film and fiche

allow time for the publisher to provide the deposit library with login details so that when the request is made by web harvester for the on line work behind the login page, the web harvester will be able to gain access behind the login page and the publisher consequently will be able to comply with the obligation to deliver the work by automated response to the web harvester. Deposit libraries are required to use relevant registration details provided by publishers for the first and all subsequent requests by web harvester to registration or pay sites, which will avoid the need for deposit libraries to give advance notice each time the web harvester software requests works from those sites.

Delivery by agreed alternative method

- 3.5 As mentioned above, the regulations have specific provisions for where a publisher, in place of web harvesting, has **agreed** a specific method of delivering on line work with a deposit library, for example by way of a secure web upload facility to a dedicated site (see section 5).
- 3.6 Where such an agreement is in place, the regulations require the publisher to deliver any work requested in writing by the deposit library within one month of the request. Work delivered in accordance with this obligation is subject to the restrictions on permitted activities (see section 11) and the exemptions from liability (see section 12) that apply under the 2003 Act.
- 3.7 Alternative delivery to automated web harvesting can be negotiated at any time. Similarly, either the publisher or deposit library can ask at any time to amend the terms of an agreement, or to revert to the default system of web harvesting. There is no requirement for either a deposit library or a publisher to pro-actively seek alternate methods of delivery to web harvesting.

Published in the United Kingdom

- 3.8 The duty to deliver non-print (and print) work under the 2003 Act only applies to work which is published in the United Kingdom. Under the regulations an on line work is published in the United Kingdom when:
- it is made available to the public from a website with a domain name which relates to the United Kingdom or a place within the United Kingdom; or
 - it is made available to the public by a person and any of that person's activities in relation to the creation or publication of the work take place within the United Kingdom.
- 3.9 Work for which there is no access for persons within the United Kingdom is excluded from what is deemed to be 'published in the United Kingdom' e.g. a work that was only available for subscription to people in the USA.

Section 4: Summary of the regulations

4.1 This summary gives a brief explanation of each aspect of the regulations.

Part 1 – Introductory

Citation and commencement

4.2 This section sets out how the regulations may be cited and their commencement date.

Interpretation

4.3 This section describes the key definitions as used within the regulations.

Part 2 – Exemption for existing micro-businesses and new businesses

4.4 This part of the regulations exempts existing micro-businesses and new businesses from certain provisions of the regulations (see section 2 above).

Part 3 – Deposit

Non-print work to which the Act applies

4.5 Regulation 13(1) describes the types of non-print works that potentially may fall within the scope of the regulations. In summary, this is all off line work and all on line work. Regulation 13(2) makes it clear that certain types of content are excluded from the regulations. This is content which is exclusively or predominantly film or music, content containing personal data on social networking sites and content published before the regulations were made.

4.6 Regulation 13(3) sets out a prescribed description of work for the purposes of section 10(5)(a) of the 2003 Act. The combined effect of regulation 13(3) and the definition of “published in the United Kingdom” for the purposes of section 10(5)(b) of the 2003 Act under regulation 18(3) (see paragraph 4.16 below) is to permit deposit libraries to copy work of the prescribed description from the internet. This is in addition to the ability of deposit libraries to request *delivery* of work published on the internet under regulation 16 (see paragraphs 4.11 to 4.14 below). In practice, copying and requesting work from the internet are likely to be done by deposit libraries in a similar way, as both will be achieved through web harvesting. It will be possible, however, formally to distinguish between a request for a work from the copying of a work because the regulations (regulation 16(3)) require that requests must be made from an IP address dedicated for the purpose.

- 4.7 The on line work which may be copied is, with one difference, the same in scope as the on line work which may be requested by deposit libraries – that is, work published on line in the United Kingdom (apart from work which is exclusively or predominantly a sound recording or film, or which contains personal data and is only made available to a restricted group of persons). The difference is that the work which may be copied from the internet may include work published before the regulations were made. The exemption for micro-businesses and new businesses set out under Part 2 of the regulations does not apply for work copied from the internet.
- 4.8 Work of the prescribed description which is copied from the internet by a deposit library or a person acting on its behalf is subject to the restrictions on permitted use set out in the regulations. The copying of such work is also subject to the same exemptions from copyright and database right⁵ infringement, and the same provisions regarding liability for defamation, as apply to work delivered to a deposit library under section 1 of the 2003 Act.

New and alternative editions

- 4.9 Regulation 14(1) enables publishers to deposit a work in a non-print format if substantially the same work is published in both print and non-print formats. However, this can only be done in agreement with the deposit libraries. If no agreement is in place, the duty under the 2003 Act to deposit the work in printed format still applies. Where a work is published in a number of non-print formats only, regulation 14(2) allows the publisher to deposit the work in the non-print format of their choice.

Entitlement to delivery: off line work

- 4.10 Regulation 15 sets out who is entitled to receive delivery of off line work. The British Library is entitled to delivery of every off line work published in the UK, and the other deposit libraries are entitled to request delivery. The delivered copy must be of a quality most suitable for preservation as agreed by the publisher and the library or, in the absence of agreement, of the quality decided by the publisher.

Entitlement to delivery: on line work

- 4.11 Regulation 16(2) allows deposit libraries and publishers to come to agreement on how web-based content can be delivered to the deposit libraries other than using the web harvesting process. It places no obligation on publishers to enter into an agreement; however, if an agreement is reached, web-based content which is deposited using the agreed method of delivery will benefit from the exemptions from liability that apply

⁵ Intellectual Property Office definition of the database right: <http://www.ipo.gov.uk/types/copy/c-otherprotect/c-databaseright.htm>

under the 2003 Act (see section 12). The work delivered under this section must be delivered within one month of the request and must be of a quality most suitable for preservation purposes, which will be decided by the publisher in the absence of agreement with the deposit library. This provision aims to give publishers different options for delivery of web-based content should they not wish to deposit using the web harvesting method. It also gives clarity to publishers on timings of delivery.

- 4.12 Where there is no agreement in place under regulation 16(2), regulation 16(3) entitles deposit libraries to delivery of web-based content by a request made through a web harvester to the IP address from which the content is made available. This includes content that is freely available and content that is subject to public access restrictions, such as passwords and login details.
- 4.13 For web-based content that is freely available, the contact between the web harvester and the IP address hosting the content will constitute a request for delivery under the regulations. The regulations require that delivery in response to a request must be by automated response to the web harvester, and for freely available content this obligation will be met by the collection of the content by the web harvester.
- 4.14 For web-based content that is available behind a login facility, the same principles will apply in relation to the making of requests and delivery, except that a request to a website with a login facility will be deemed to be a request for the content behind the login facility. The delivery obligation to allow for automated collection of content behind the login facility will still apply. To allow the publisher, therefore, the opportunity to provide the deposit library with login details so that the delivery obligation can be met, the regulations (regulation 16(4)) require the deposit library to give the publisher at least one month's written notice of its intention to make its first request for the access restricted content. The regulations (regulation 16(6)) then require a deposit library to use these login details each time the web harvester visits the website, ensuring that the publisher will be able to comply with its obligation to deliver the content behind the login page.

Delivery of additional information

- 4.15 This section sets out what additional information should be delivered with the works when depositing them. These requirements only apply to off line works, and on line works with an agreed method of delivery.

On line work: published in the United Kingdom

- 4.16 This section sets out what on line works are to be considered as published in the United Kingdom and therefore falling within scope of the regulations. This section also applies this definition for the purposes of what constitutes "connected with" the United Kingdom under section 10(5) (a) of the 2003 Act.

Part 4 – Permitted Activities

Use etc. of relevant material by deposit libraries

- 4.17 These provisions allow deposit libraries to transfer or lend deposited material to other deposit libraries. They also allow the deposit libraries themselves to use the deposited material for the purposes of their own research. In addition, the National Library of Scotland is permitted to transfer off line legal publications to the Faculty of Advocates and to allow the Faculty of Advocates to have access to on line versions of legal publications. This gives consistency with the current arrangements under which the National Library of Scotland transfers printed legal publications to the Faculty of Advocates.⁶

Reader access to relevant material

- 4.18 This section sets out the circumstances in which a deposit library may allow readers access to the non-print works that they have had deposited with them. Each deposit library may only display the same non-print work at one computer terminal at any one time (regulation 23). Deposit libraries must wait at least seven days from delivery of on line work before making the work available to readers (regulation 24).
- 4.19 Regulation 25 allows rights holders to apply for an embargo on non-print works being viewed in the deposit libraries, if they can demonstrate that allowing access to the non-print work would, or would be likely to, unreasonably prejudice their legitimate interests. A rights holder may request an initial embargo of up to three years and may make subsequent requests of up to three years, each time meeting the requirement to demonstrate prejudice to their legitimate interests.

Reader access to relevant material: visually impaired persons

- 4.20 This section allows deposit libraries to produce copies of a non-print work that are accessible to a visually impaired person, provided that accessible copies of that work are not otherwise commercially available. Deposit libraries may only provide access to one accessible copy of a non-print work at any one time.

Supplying copies for research etc.

- 4.21 This section restricts the circumstances when copies of a work can be produced by the deposit library and given to a reader. These are for the purposes of parliamentary or judicial proceedings, or a Royal Commission or statutory inquiry – and, additionally,

⁶ References to 'transfer' and 'lend' in the regulations follow the wording of the 2003 Act, but in practice the deposit libraries will share deposited on line material via a secure content management system to allow controlled access across the deposit libraries.

where database right does not subsist in the work, for the purposes of non-commercial research or private study, criticism or review or reporting current events. Copies must be in print unless the copyright owner has agreed that copies may be provided in another medium. The material copied must not represent more than a reasonable proportion of the wider material of which the element copied forms a part.

Copying relevant material for the purposes of preservation

4.22 This section allows deposit libraries to make copies of non-print works for preservation purposes. The copy may be made in a different medium or format from the original.

Adapting relevant material for the purposes of preservation

4.23 This section allows deposit libraries to adapt non-print works for preservation purposes. The adaptation may be made in a different medium or format from the original.

Disposing of relevant material

4.24 This section allows deposit libraries to dispose of deposited material by destroying it, but deposit libraries must keep at least one copy of all relevant material, and that copy or copies must be the most suitable version for preservation purposes.

Section 5: Collections policy and how delivery will operate in practice

Collections policy

- 5.1 The deposit libraries will maintain and publish a non-print deposit collections policy describing their collecting strategy and high level priorities for non-print legal deposit. Deposit libraries will identify which publishers (and publications) are in scope. Deposit libraries will use a variety of sources such as ISBN and ISSN listings, CrossRef and CIP data to identify content liable for deposit.

Delivery by agreement

- 5.2 In some instances, a deposit library and a publisher may reach an agreement as to how that publisher's non-print content should be delivered to the deposit library. For example, one deposit library (acting on behalf of all the deposit libraries) may contact a publisher to discuss arrangements for that publisher's non-print publications to be delivered to the deposit library by way of a secure web upload facility. If an agreement can be reached then delivery under that agreement will satisfy the requirement to deliver under section 1 of the 2003 Act, and the work that is delivered will be subject to all the restrictions and exemptions that will apply to non-print work under the regulations. The quality of the work delivered by the publisher must be of a quality most suitable for preservation purposes, which will be decided by the publisher in the absence of agreement with the deposit library. The deposit libraries will co-ordinate their contact with publishers to avoid publishers having to reach separate agreements with several deposit libraries.
- 5.3 Another example of when a publisher and a deposit library may reach an agreement regarding delivery is where the same work is published in both print and in a non-print version. The regulations allow the publisher and the deposit library to agree that work should be deposited only in the non-print format, effectively replacing the normal obligation to deposit a print version. However, if there is no agreement to switch from the deposit of a print to non-print version the default obligation to deposit a print version will apply. It is envisaged that the normal channels of communication between the deposit libraries and publishers will be used to arrange these agreements where they are appropriate.

Delivery by web harvesting

- 5.4 Where there is no agreement between a publisher and the deposit libraries regarding an alternative method of delivery, then delivery of on line work which is within the scope of the 2003 Act and which is part of the deposit libraries collections policy will be done by web harvesting. The deposit libraries will co-ordinate their web harvesting programmes to provide sufficient coverage of collection and to minimise the impact on publishers' websites. Where on line work to be harvested is contained behind a login facility, publishers will have the opportunity to provide login details in order to meet their delivery obligations (see earlier sections). All passwords and login details will be managed securely by the deposit libraries. Where a publisher's website is managed by a separate company or distributor, these third parties will be regarded as proxies for the publisher themselves. The obligation to deliver remains with the publisher. A summary flow chart of the web harvesting delivery process is given at Annex A.

Section 6: Assessing whether non-print works are within scope of the regulations

Under what circumstances will audio-visual content within a wider work be collected?

- 6.1 Some non-print works may, in addition to text, contain embedded audio-visual content such as trailers, adverts and short video clips. Provided that the text is not merely incidental to the audio-visual content, then the whole work, including the audio-visual content, is within the scope of the regulations.

Under what circumstances will content from social networking sites and blogs be within scope?

- 6.2 Regulation 13(2)(b) excludes from the scope of the regulations work which contains personal data and which is only made available to a restricted group of persons. In this sense, 'restricted' means that the work is not generally available to all members of the public rather than the 'practical' barrier of registration that might make some works less immediately available.
- 6.3 Therefore 'private' social networking content (e.g. 'protected tweets' to approved followers on Twitter, posts to 'friends' on Facebook, chat room discussions limited to a restricted group) would be out of scope of the regulations, but open access social networking pages, blogs and public comments added to articles are within scope.

Why would deposit libraries choose to collect open access social networking content and blogs?

- 6.4 Some social networking content and blogs may play an important part in recording our national heritage. For example, many public sector organisations and broadcasters now have blogs and social networking presences. Open blogs and 'tweets' etc. by prominent public figures, social commentators and businesses may provide a similar function to traditional news releases. Blogs by members of the public may also prove to be valuable research material in the future; for example they may be related to events of national significance, or may help a researcher assess social attitudes over a period of time.

Are artistic works within scope?

- 6.5 Artistic works such as photographs or reproduced graphic work (e.g. paintings) are within scope if they are made available to the public either on line or off line. This is on a similar basis to the way that a photography book for example would be subject to print deposit.
- 6.6 The Department does not envisage that legal deposit libraries will try to capture all published non-print artistic works. As a broad summary, the Department expects the collections policy of the legal deposit libraries to prioritise on line works which are similar to printed art books. This may include some sites which would not have been previously published in print due to the size of printing and distribution costs, such as the Government Art Collection's on line database. The Department does not envisage the legal deposit libraries focusing on publicly available content from photo sharing websites (e.g. Flickr, Photobucket), although in some cases a limited amount of this content will be collected where it is a live feed into a wider website (e.g. the DCMS website includes a small feed from Flickr).

Is licenced content and user generated content within scope?

- 6.7 Some websites include third party content which is provided under licence from the author or publisher, or user-generated content such as comments on an article, amateur story-writing or citizen journalism. Other websites may provide the tools to create and host websites, with the entirety of the content created by third parties.
- 6.8 Whilst these websites may not be the primary publishers of the content, the regulations cover on line content which is 'made available to the public'. Secondary publishing of licensed content and user-generated content still involves making work available to the public, and these types of content are therefore within scope of the regulations.

Which websites count as 'published in the UK'?

- 6.9 The deposit libraries' harvesting software will be programmed to target relevant websites with domain suffixes which can be immediately linked to the UK. Apart from the obvious suffix of '.uk', this may include any new generic top level domain names created in the future which are linked to a place within the UK (e.g. .wales).
- 6.10 In addition, a number of domain suffixes such as .org, .com or .net are used internationally. In these cases it may not automatically be clear whether activities in relation to the creation or publication of the work take place within the UK. The Department expects that in some cases legal deposit libraries and publishers may need to discuss individual works; for example, if an international publisher's website

hosts publications created and marketed in different countries. The Joint Committee on Legal Deposit⁷ (JCLD) have agreed guidelines on the process for determining whether material without generic top level domain names linked to a place within the UK are within scope of the regulations. This is reflected in the information provided on legal deposit on the British Library (and other legal deposit libraries') websites.

Will externally linked content be harvested?

- 6.11 In relation to externally linked content, the inclusion in one website of a link to another website does not make the publisher of the first website the publisher of the content of the linked site for the purposes of the regulations. The publisher of the linked content is the person who makes that work available to the public rather than the person who provides a link to that work. So, for example, where a UK on line work includes a link to a work which is published outside the UK and therefore outside the scope of the regulations, the publisher of the first website is not the publisher of the work published outside the UK, and that latter work remains out of scope of the regulations.

⁷ The JCLD is a body composed of representatives from the deposit libraries and the publishing trade associations – <http://www.bl.uk/aboutus/stratpolprog/legaldep/members/legaldepositmembers.html>

Section 7: Delivery of additional information

Do publishers have to deliver a copy of any computer program and any information necessary to access the work?

- 7.1 The regulations provide that the publisher must deliver, in relation to off line work and on line work with an agreed method of delivery:
- a copy of any computer program and any information necessary to access the work including any information required to allow a reader to read the work;
 - a copy of any manual or other material that accompanies the work and is made available to the public.
- 7.2 This is intended to cover any additional material, such as computer programs or manuals/guides, which are published to accompany off line formats such as CD ROMs. It would also cover any Technical Protection Measures that apply to off line works. It is also intended to cover any programs or information which is necessary to access on line work delivered in a manner agreed between the publisher and the deposit library. This provision does not cover work which is web harvested as it is not considered that additional programs or material will be relevant to such work.

Is metadata within scope of the regulations?

- 7.3 Metadata is the information that describes an electronic publication and includes details such as: its author and title; its physical properties (type of file, file size); unique characteristics (numerical identifier, an ISBN). All of this information helps a reader to find an electronic publication. In many cases metadata may form part of the non-print work and would fall within the legal deposit obligation.
- 7.4 The following points would also apply:
- publishers are not expected to generate metadata solely for the purpose of non-print legal deposit;
 - metadata will be collected as part of the harvesting process;
 - publishers do not have to deposit any other metadata that is not collected as part of the harvesting process;
 - metadata that is collected by the deposit libraries through the legal deposit of works cannot be sold to any third party.

Section 8: Access to deposited works

- 8.1 Access to non-print works that have been delivered to the deposit libraries under the regulations is restricted to computer terminals on premises controlled by the deposit libraries. In the case of legal publications delivered to the National Library of Scotland, access will also be available from the Faculty of Advocates' library, in line with current arrangements for access to legal publications in print format.
- 8.2 There are no restrictions on how many computer terminals a deposit library may have. The computer terminals, however, must be situated on premises controlled by the deposit libraries and only readers who are on premises controlled by the deposit libraries can be allowed access to (i.e. can view) the work on a computer terminal.
- 8.3 Access to the same non-print work is restricted to one computer terminal at any one time in each of the deposit libraries. This is aimed at giving equivalent access to that available to a printed work, where one copy of the printed work is available in each deposit library.
- 8.4 The access restrictions also apply to the Faculty of Advocates, which is treated as a deposit library in relation to non-print legal publications.
- 8.5 The JCLD has agreed guidelines on interpreting the definition of 'library premises' which is reflected in the information provided on legal deposit on the British Library (and other legal deposit libraries') websites.

Section 9: Embargoes on deposited works

- 9.1 To ensure that the impact on publishers' business models is kept to a minimum, the regulations include some general provisions about embargoes. These are intended to protect the commercial interests of copyright owners or database right owners who may be unreasonably prejudiced if readers are allowed access to their works in a deposit library, albeit on the limited basis prescribed under the regulations and described in section 8 above.
- 9.2 Although the possibility of an embargo does not remove the obligation to deposit the publication with a deposit library, an embargo means that readers will not be able to access the publication for a specified period of time.
- 9.3 The regulations provide that the deposit library must impose an embargo for a specified period of time not exceeding three years if a copyright or database right owner submits a written request and demonstrates that viewing by a reader within that specified period would, or would be likely to, unreasonably prejudice the legitimate interests of the person making the request.
- 9.4 It is worth noting that this goes further than the position in relation to print publications. For print, embargoes are the subject of agreement between the publisher and the deposit library.
- 9.5 An initial embargo may be requested at any time. Requests for further embargoes may be made for the same publication. These subsequent requests must be made at least one month before the expiry of the existing embargo and must, as before, demonstrate that viewing by a reader within that further period would, or would be likely to, unreasonably prejudice the legitimate interests of the person making the request.

Section 10: Security for deposited works

Background

10.1 A common concern in publisher responses to the Government's consultations on non-print legal deposit related to the security of works deposited under the regulations. Set out below are the systems and procedures that the deposit libraries have already implemented, and some additional controls that will be in place prior to any material being deposited under the regulations.

Security Policy and Principles

10.2 Each deposit library has a well-defined information security policy. Key points are:

- Information governance committees within each library or its parent institution will coordinate that library's information governance, which includes information security. The committees will direct, monitor and control the implementation of information security within the relevant library;
- Each library or parent institution has appointed a senior responsible officer for information security. This ensures that information security is addressed at a sufficiently senior level within each organisation;
- Each library or parent institution also has a technology security officer to focus on the technical aspects of the security of digital information.

Infrastructure Security

10.3 The deposit libraries are linked by a dedicated shared infrastructure which allows them to share electronic data. The shared infrastructure is protected against unauthorised access and other information security risks to the confidentiality, integrity and availability of information held within it. All access to each library's facilities and information assets is restricted to authorised hardware, software, organisations, and people. Access to each library's network is limited to authorised users according to business need and in accordance with the library's information security policy.

10.4 Access to each library's network is controlled by industry leading security appliances.

10.5 The shared infrastructure supports a digital content storage system (DCSS) developed by the British Library, which allows for the management of digital material,

including material deposited under the regulations. The DCSS has additional security. A dedicated security appliance ensures that each point of access to the DCSS is secure, and access to this appliance and the firewalls around the DCSS is limited to specially authorised British Library staff.

- 10.6 Digital content deposited under the regulations will be stored in four nodes of the DCSS, located in London, Boston Spa, Aberystwyth and Edinburgh. Readers in the British Library, the National Library of Scotland and the National Library of Wales will access material via the local node; readers in Oxford, Cambridge or Dublin will connect to one of the British Library nodes via a secure network in order to view the material. Transfer of data between nodes of the DCSS is across secure network connections. Transferred data is encrypted.
- 10.7 The nodes of the DCSS constitute a private network which has no wider public connection to the internet.
- 10.8 Each node of the DCSS is separate from the DCSS itself and only authorised library staff have access to the DCSS. Separate access must be explicitly granted.
- 10.9 A Secure File Transfer Protocol is available for publishers depositing electronic content. Content deposited into the DCSS itself only takes place at the British Library. Content is secured within the shared library infrastructure whilst waiting to be processed, and is deleted from the shared infrastructure once processing into the DCSS is complete.
- 10.10 Information systems, software and data are protected against malicious software. A leading anti-virus product is used to check all electronic content on each library's network; in addition, a second anti-virus product performs a second stage virus check on all content deposited to and stored in the DCSS.
- 10.11 Reader access to content will be controlled. The system allows delivery of content only to designated terminals, prevents any digital copying of the content and restricts the capability to print. It also ensures that the same content can only be displayed on one terminal at a time in each deposit library.
- 10.12 The DCSS records all requests for access to items that it holds. This access record will allow verification that no concurrent access has occurred.
- 10.13 The results of all IT audits – internal and external – are reported to the relevant information governance committee, which is responsible for ensuring that prompt and effective action is taken to remedy vulnerabilities that have been identified. Should rectification be required, a follow-up audit is commissioned to ensure that the reported vulnerability has been addressed and the security of the shared infrastructure is maintained at all times.

- 10.14 External audits of the IT security for non-print legal deposit, including the management of access in all deposit libraries, will be carried out on a regular basis. The results of all such external audits, plus any internal audits for non-print legal deposit, together with any action plans to remedy vulnerabilities, will be confidentially reported to all members of the Joint Committee for Legal Deposit, in which both publishers and the deposit libraries are represented. Additional jointly-sponsored audits will be carried out when required.

Publisher Password Security

- 10.15 The regulations require publishers to provide relevant login details to allow delivery of content from behind login pages. The deposit libraries will implement additional security measures to protect these login details and ensure that they are only used for the purposes permitted by the regulations.
- 10.16 The deposit libraries suggest that only login details that have been encrypted should be transferred by publishers to deposit libraries.
- 10.17 A commercial password management system will be implemented to store access credentials in a secure repository. This password management system will mediate all access to the publisher website. It will limit access to the login details to named individuals who will have administration access to the password repository. A log of all transactions made in this password management system will be maintained.
- 10.18 For each publisher, the deposit library responsible for harvesting their content will maintain details of a designated contact at that publisher. If the supplied login details should at any time fail, a representative of the library will contact the designated person to resolve the issue.

Section 11: Permitted activities in relation to deposited works

- 11.1 The Department is mindful of the need to ensure that these regulations must not unreasonably prejudice the interests of the publishers of the deposited non-print works. It is also recognised that new business models are rapidly developing and will continue to evolve as publishers find new ways to commercially exploit their works.
- 11.2 Only those activities which are specifically permitted in the regulations may be carried out in relation to the deposited non-print works. These permitted activities are deliberately restrictive.

Use of non-print works by deposit libraries

- 11.3 As set out in section 4 above, the deposit libraries are permitted to transfer or lend deposited work with each other, and are permitted to use deposited material for the purposes of their own research. The National Library of Scotland is also permitted to provide the non-print legal publications it receives to the Faculty of Advocates in order to continue the current arrangement in place for printed legal publications.

Providing access for readers to the deposited works

- 11.4 The deposit libraries may provide readers with access to non-print work. However, a deposit library may only allow the same work to be accessed at one computer terminal at any one time.

Access for visually impaired persons

- 11.5 The regulations also allow deposit libraries to produce and to allow access to copies of non-print works that are accessible to visually impaired persons (“accessible copies”). Once again, these provisions in the regulations are based on the existing law which governs how libraries can produce accessible copies of the publications they hold.⁸

⁸ See section 31A-31F of the Copyright, Designs and Patents Act 1988 as amended by the Copyright (Visually Impaired Persons) Act 2002.

Copying and providing copies to readers

- 11.6 The regulations largely mirror the existing law which governs how and when a library may take a copy of part of a work and provide that copy to a reader. The deposit library must be satisfied that the copy is for a person who will use it for the purpose of non-commercial research, private study, parliamentary or judicial proceedings, a Royal Commission, or a statutory inquiry⁹ and will not use it for any other purpose. Copies must be in print unless the publisher agrees otherwise.

Copying and adapting for preservation purposes

- 11.7 The regulations contain provisions based on those which the Intellectual Property Office has previously consulted upon in relation to the Gowers recommendation for libraries and archives to be able to take copies and format shift for preservation purposes¹⁰.
- 11.8 Accordingly, the deposit libraries may copy and adapt the deposited non-print works in order to preserve them and in order to replace a copy of a non-print work which has been deposited in another deposit library and subsequently lost, destroyed or damaged¹¹. The deposit libraries may also make a copy in a different format or medium when they consider that this is necessary for preservation purposes.

Disposing of relevant material

- 11.9 Deposit libraries may destroy duplicate copies of non-print work, but they must retain at least one copy of the non-print work. The copy or copies they do retain must be in the format most suitable for preservation.
- 11.10 Apart from this, and aside from the exception that the National Library for Scotland may permanently transfer off line legal publications to the Faculty of Advocates, the deposit libraries cannot otherwise dispose of deposited non-print works. For example, they could not sell any copies of the non-print works which have been obtained under the legal deposit regime, even on expiry of the copyright in those works.

⁹ If database rights exist in the work then, in line with the EU Database Directive (96/9/EC), the permitted purposes are limited to parliamentary or judicial proceedings, a Royal Commission, or a statutory inquiry.

¹⁰ <http://www.ipo.gov.uk/pro-policy/consult/consult-closed/consult-closed-2009/consult-2009-gowers2.htm>

¹¹ To ensure consistency with the EU Database Directive, deposit libraries will not be permitted to copy or adapt for preservation purposes works which are subject to database rights.

Section 12: Exemptions from liability

- 12.1 In delivering work (print or non-print) under section 1 of the 2003 Act, publishers are exempt from breach of contract or from infringement of copyright, publication right, database right or patent in relation to the work (see section 9 of the 2003 Act). The exemption extends to the delivery of computer programs or additional information as required under the regulations.
- 12.2 Deposit libraries are exempt from breach of copyright and database right from anything done in relation to deposited material which is permitted to be done by the regulations (see section 8 of the 2003 Act).
- 12.3 Publishers and deposit libraries are exempt from liability for defamation resulting from activities relating to deposited works. However, the exemption will be lost if the publisher or the deposit library knew or ought to know that the material was defamatory and they had a reasonable opportunity to prevent the use.
- 12.4 Deposit libraries are also exempt from copyright and database right infringement, and have the same qualified exemption from liability for defamation, in relation to work copied from the internet by a deposit library as permitted by the regulations.
- 12.5 As is their practice for print deposit, the legal deposit libraries have an on-going obligation to store at least one copy of any work deposited. Therefore legal deposit libraries would not be able to delete all the copies of a work even where, for example, it was released on line by mistake by a publisher. In such cases, however, legal deposit libraries would be able to withhold access to such works, for example through continued embargoes.

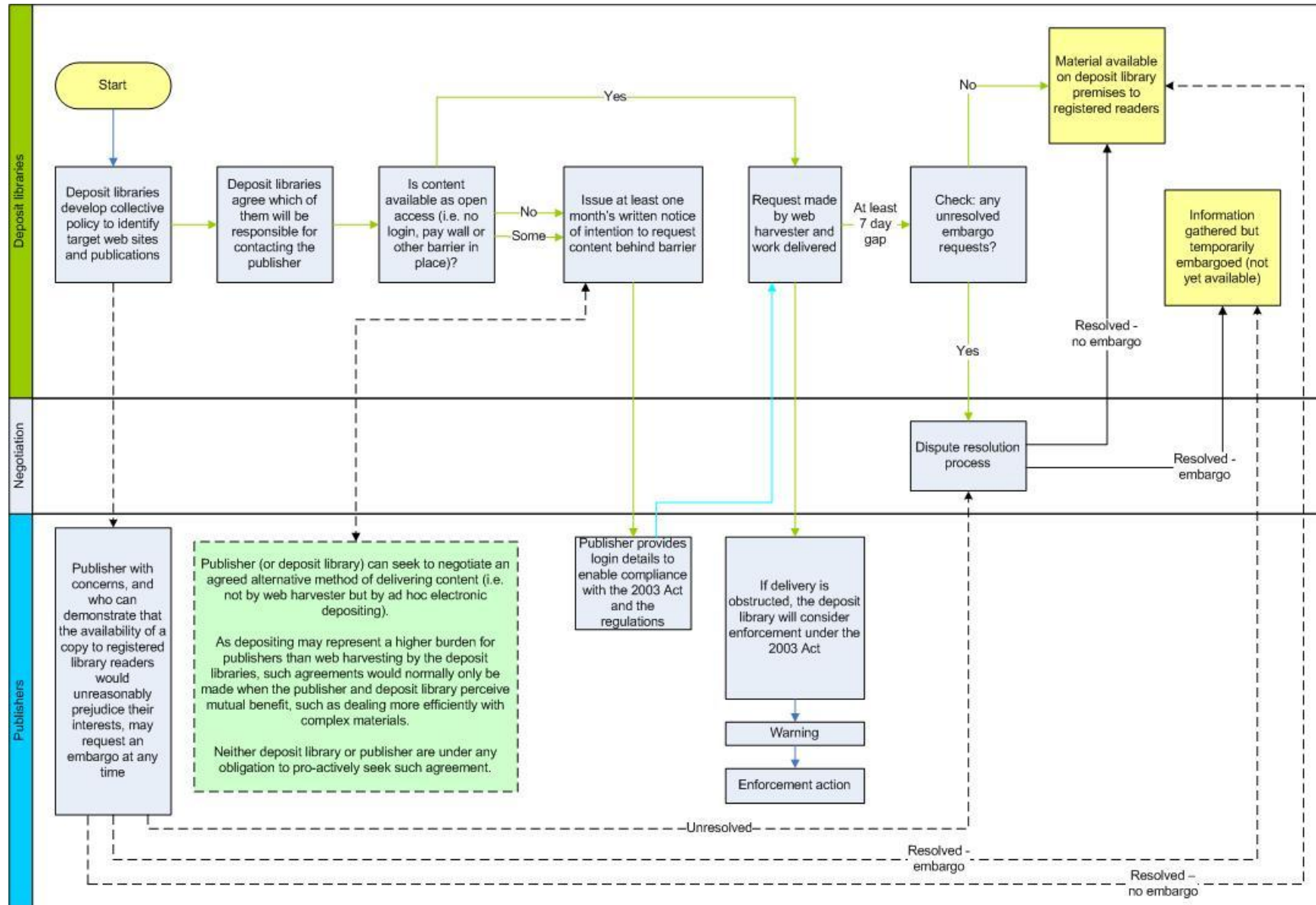
Section 13: Co-operation and dispute resolution between publishers and deposit libraries

- 13.1 The regulations are not intended to prescribe in detail how deposit libraries should operate the non-print deposit regime. The Department expects, however, the deposit libraries to have in place clear management structures and policies to support how they will operate the regulations.
- 13.2 The Joint Committee on Legal Deposit¹² (JCLD) is a body composed of representatives from the deposit libraries and the publishing trade associations. Its main purpose is to facilitate cooperation between publishers and deposit libraries for the effective implementation of statutory and voluntary deposit arrangements. Its work includes discussing non-print collecting policies, reaching mutual agreement on questions of interpretation and jointly assessing new developments and future needs. The JCLD intends to extend its membership to include expertise and perspectives from other publishing interests in non-print deposit, as well as those already represented by the publishing trade associations.
- 13.3 By advising in the development of appropriate policies and techniques, the JCLD aims to ensure that deposit arrangements are implemented in a cooperative manner which avoids grounds for disagreement between a publisher and a deposit library. Nevertheless, such disagreements may still arise and the JCLD will therefore support a three-stage process for resolving disputes in connection with the regulations. The process is designed to encourage resolution by mutual consent wherever possible, but includes the option of referral to an independent arbitration panel if necessary:
- *Stage 1: Negotiation.* Direct discussion between the two parties in dispute—the relevant publisher and requesting library—to explore the issue and resolve their differences. This may include referring the matter to the Implementation Group of the six deposit libraries, to JCLD technical experts, or to other JCLD members as appropriate, for their opinions and suggestions as to a mutually acceptable compromise.

¹² Information on JCLD <http://www.bl.uk/aboutus/stratpolprog/legaldep/members/legaldepositmembers.html>

- *Stage 2: Mediation.* If resolution cannot be achieved by negotiation, the matter will be referred to a 'task and finish' group of the JCLD, for the JCLD task group to mediate in an attempt to resolve the dispute. The JCLD task group, likely to comprise a publishing (trade association) representative and a legal deposit library representative, reviews all submitted paperwork and attempts to broker a settlement between the two parties. Conclusions and recommendations, with rationale, are documented, including any suggested compromises. However the task group may also conclude that mediation is unlikely to succeed and refer the matter on to arbitration.
- *Stage 3: Arbitration.* If resolution cannot be achieved by mediation, the matter may be referred formally to an arbitration panel, composed of two publisher representatives, two library representatives and an independent chair appointed by the JCLD. Each party may make a written submission to the panel and should agree to be bound by its decision.

Annex A: Summary of the web harvesting process





Department
for Culture
Media & Sport

4th Floor, 100 Parliament Street

London SW1A 2BQ

www.gov.uk/dcms