Post Implementation Review of the Legal Deposit Libraries (Non-Print Works) Regulations 2013

This document comprises the final Post Implementation Review of the Legal Deposit Libraries (Non-Print Works) Regulations 2013 and is submitted to DCMS on behalf of the Joint Committee on Legal Deposit (JCLD).

The Post Implementation Review is presented as follows:

1. **Part 1: Post Implementation Review: Background**
2. **Part 2: Post Implementation Review: Evidence Base**
3. **Annex A: Post Implementation Review: Libraries’ Submission**
4. **Annex B: Post Implementation Review: Publishers’ Submission**
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Foreword

The Legal Deposit Libraries (Non-Print Works) Regulations 2013 were introduced on 5 April 2013. This followed a public consultation on the draft regulations at the beginning of 2012, to which there was general support for the policy objective of preserving the UK’s non-print published output and the proposed regulations were broadly welcomed. Alongside the introduction of the regulations there was a commitment to carry out a post-implementation review within five years of the regulations coming into force and a report to be published.

The purpose of the regulations was to extend the regime that requires every printed work published in the UK to be deposited with the British Library and, upon request, with five other legal deposit libraries. The extension now covers non-print works, that is, works published in a medium other than print. This means work published on line (such as content from the internet, an e-book or an electronic journal) or work published off line (that is, published in a physical form other than print such as a CD-ROM, DVD-ROM or microfilm).

The extension of legal deposit to non-print works was designed to ensure that the UK's non-print published output (and thereby the UK’s intellectual record and published heritage) is preserved as an archive for research purposes, while also reducing the costs of legal deposit to publishers overall. The principal policy objective of the regulations is to allow the preservation of the UK’s non-print published output for future generations.

This review has been compiled by the Joint Committee on Legal Deposit (JCLD), in consultation with the Department for Digital, Culture, Media and Sport. JCLD comprises of representatives from the legal deposit libraries and publishing trade associations and was inaugurated in January 2004. Its main purpose is to facilitate cooperation between publishers and deposit libraries for the effective implementation of statutory and voluntary deposit arrangements. Its work has included evaluating the effectiveness of non-print legal deposit arrangements, assess the application of the Regulations in practice and future needs, and gather evidence in preparation for the review of the Regulations.

The following report provides a detailed assessment of the extent to which the regulations have achieved the objectives and provides recommendations for improvements to ensure the policy objectives are being fully met. This includes two recommendations on which JCLD are in agreement:

* develop a solution to ensure legal protection for publishers who wish to deposit a digital facsimile of content which, although not published digitally, would deliver increased preservation capacity and reduce burden on deposit and collection by being deposited in an electronic format instead of print; and
* update the NPLD Regulations to ensure they reflect newer accessibility, legislation and guidelines and ensure that the NPLD Regulations keep in line with any future accessibility recommendations.

In addition, the legal deposit libraries and publishers have provided views on further areas on which they consider require further investigation.

A significant amount of work has been undertaken by publishers and representatives of legal deposit libraries through the JCLD, not only to implement the Regulations, but to produce this detailed PIR. The digital processes of British Library and the commitment to continuous improvement by the other legal deposit libraries has been recognised by an independent assessment and together with the commitment from publishers has meant the Regulations have worked well and that there is an effective system of non-print legal deposit in place.

# Executive Summary

**This Post Implementation Review (PIR) of the 2013 Non-Print Legal Deposit Regulations has been conducted by the Joint Committee for Legal Deposit (JCLD), and aims to examine the question of ‘Have the regulations achieved what they were intended to?’ by evaluating the success of the Regulations against the policy objectives. This review will evaluate to what extent the principal policy objective of ‘allowing preservation of non-print publications for future generations’ has been achieved.**

**It is the view of the JCLD that there are three main areas to consider:**

* **Collection**
* **Preservation**
* **Access and use**

**Agreement was met for two out of the three main areas, collection and preservation; but could not be met on access. However, all parties to JCLD agree to continue constructive discussions on access and that possible future public consultation would be an acceptable way forward.**

**Firstly, on matters of **collection** of Non-Print Legal Deposit (NPLD) content, JCLD are satisfied that the regulations have achieved what they were intended to, and that the libraries and publishers are collaborating effectively to make good progress toward a comprehensive national collection.** The total number of monographs and serial parts collected in the first four years of implementation exceed the highest projections in the Final Impact Assessment (FIA) by 23%. Fifty-eight per cent of monographs and 35% of eJournals are now collected digitally**, using a shared infrastructure resulting in NPLD being more efficient than the print equivalent. The evidence provided within this PIR demonstrates how much has been achieved in the first five years of operation, and identifies future priorities for content to be added. This latter point applies particularly to more complex forms of digital publishing, such as consumer and business online magazine publications, newspapers, maps, and non-text materials such as born-digital sheet music and associated sound, data and code.**

**Secondly, on matters of **preservation**, JCLD are again satisfied that the regulations have achieved their intended purpose. The collection has undergone an intensive audit by the Digital Preservation Coalition, which has praised the exemplary nature of preservation work, noted the scale and complexity of the challenge being addressed, and made recommendations to ensure practice can continue to improve. This is further articulated within this PIR.**

**In both the collection and the preservation of NPLD content, the evidence presented here represents a snapshot in time since implementation of the Regulations is ongoing and will continue to evolve as digital publishing evolves.**

**The third area considered by JCLD has been that of **access and use** of NPLD collections. The Review has revealed differences of perspective in how the NPLD framework should respond to the challenges of increasingly rapid digital and technological change, while preserving our heritage for future generations. These differences were evident when the Regulations were first formulated, and over the four years since implementation it has not been possible to reach a common view upon how the Regulations might be improved in future.**

**The Publishers’ view the use of NPLD material for purposes other than preservation as falling outside the scope of the Regulations but are willing to consider that improved access should be open to public consultation. However, the libraries believe the Regulations were also intended to deliver improved access to NPLD content for researchers and users. On this fundamental point, JCLD has been unable to reach a consensus position, which has led to very different interpretations of how the Regulations could be ‘future-proofed’ (and indeed, whether they should be) with improvements as a result of this Review. The Publishers’ and Libraries’ respective positions are laid out in Part 3 of this submission, and in each case they seek to address the question of what future changes could make the Regulations more effective.**

**This PIR also makes recommendations for improvements upon which JCLD are in agreement. These relate to areas where we believe the objectives of the Regulations have not been achieved, notably in ensuring accessibility for disabled users in line with the Equality Act 2010, and in providing the ability to collect newspapers in the form of digital facsimiles. JCLD believe the case for these improvements is compelling, not least because of the potential cost to the public purse of requiring the libraries to continue to collect print newspapers, combined with the lack of opportunity afforded to newspaper publishers to benefit from cost savings afforded to other publishers who can deposit electronically.**

Proposed Improvement

Develop a solution to ensure legal protection for publishers who wish to deposit a digital facsimile of content which, although not published digitally, would deliver increased preservation capacity and reduce burden on deposit and collection by being deposited in an electronic format instead of print.

Proposed Improvement

To update the NPLD Regulations to ensure they reflect newer accessibility, legislation and guidelines. And to ensure that the NPLD Regulations keep in line with any future accessibility recommendations.

**Overall the costs to the publishers and** *Legal Deposit Libraries* **to-date have been lower than anticipated, both in terms of set-up and ongoing running costs. With the ingest to-date, many of the costs originally estimated for publishers have not materialised although they will need continued monitoring as smaller publishers content and more complex content is deposited.** *The review concluded from a survey of publishers that 82% of publishers reported that they incurred no set-up costs. In terms of ongoing administrative costs the review reported that the issues identified as part of the consultation exercise in 2012 that might drive these costs had not materialised and therefore the predicted costs had not arisen.*

*In respect of the Legal Deposit Libraries the review reported that the actual set-up costs for the first four years of operation are in line with the estimated cost for the first three years of operation. The review further reported that the actual ongoing costs for collecting and archiving NPLD material to be lower than the predicted costs over the four-year period.*

*The review also reported positively in respect of the benefits accrued to publishers and Legal Deposit Libraries. An assessment of the benefits to publishers indicated that 62% of them had made cost efficiencies in switching to NPLD and also reported that the efficiencies realised by larger publishers arose from reductions in staff time, printing costs, shipping costs and administration. Overall most publishers found the experience of transition to NPLD a positive one and would recommend transitioning to other publishers.*

*The Legal Deposit Libraries reported that the benefit of preventing material being lost to future generations has already been demonstrated with evidence showing that web content which has been collected systematically since 2013 has already disappeared from the live web – after only 24 months nearly 50% of the content crawled had gone completely, was missing or had moved. Furthermore, evidence indicated that only a very small proportion of the web content which was collected in 2004 is still available on the live web. The Legal Deposit Libraries also reported that since the introduction of the regulations they had benefitted from a reduced requirement for physical storage space with shelving space being saved at all their sites. The precise cost saving is difficult to calculate, but had this material been processed in print, the total cost to the deposit libraries would have been in excess of £5m by the fourth year.*

*Overall, it is considered that the benefits and achievements derived since the introduction of the Regulations are more than originally anticipated and with the actual costs also being lower than initially anticipated.*

Sources and Definitions

## Sources

Legal Deposit Libraries Act 2003
<https://www.legislation.gov.uk/ukpga/2003/28/contents>

Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012)
<https://www.legislation.gov.uk/ukdsi/2013/9780111533703/impacts>

The Legal Deposit Libraries (non-Print Works) Regulations 2013 (2013 No 777 LIBRARIES)
<https://www.legislation.gov.uk/ukdsi/2013/9780111533703/contents>

Guidance on the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (April 2013)
<https://www.gov.uk/government/publications/guidance-on-the-legal-deposit-libraries-non-print-works-regulations-2013>

Copyright, Designs and Patents Acts 1988
<https://www.legislation.gov.uk/ukpga/1988/48/contents>

The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014).
<https://www.legislation.gov.uk/uksi/2014/1372/contents/made>

The Equality Act 2003
<https://www.legislation.gov.uk/ukpga/2010/15/section/6>

The Special Educational Needs and Disability Act 2001
<https://www.legislation.gov.uk/ukpga/2001/10/contents>
UNESCO Guidelines for Legal Deposit Legislation, Paris 2000
<http://unesdoc.unesco.org/images/0012/001214/121413eo.pdf>

## Definitions

**2003 Act**: Legal Deposit Libraries Act 2003

**BL:** British Library

**BOD:** Bodleian Library, University of Oxford

**Copyright, Designs and Patents Acts 1988** (As amended in accordance with: The copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014).

**CUL:** Cambridge University Library

**DLS**: Digital Library Store

**FIA:** Final Impact assessment: Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012)

**JCLD:** Joint Committee on Legal Deposit

**LDLs:** Legal Deposit Libraries

**Libraries**: In this document reference to ‘Libraries’ means the Legal Deposit Libraries plus the Faculty of Advocates as described in paragraph 1 of the FIA

**NLS:** National Library of Scotland

**NLW:** National Library of Wales

**NPLD**: Non-Print Legal Deposit

**Open web**: Web content which does not require:

* + The user to be authenticated;
	+ Payment for access to content, i.e. no paywall; or
	+ Any form of membership arrangement;

**Open UK Web Archive:** the subset of the Legal Deposit UK Web Archive where website owners have given their permission to allow access of their archived web content outside of library premises on the open web

**PIR:** Post Implementation Review

**Publishers:** In this document ‘Publishers’ refers to the publishers represented by the publishing association trade bodies on JCLD

**Publishing Industry**: Reference to the publishing industry means the wider UK publishing industry, including website owners and others not necessarily represented by JCLD

**PV:** Public value

**Regulations:** Reference to the term ‘Regulations’ in this document refer to The Legal Deposit Libraries (Non-Print Works) Regulations 2013 (2013 No 777 LIBRARIES)

**TCD:** Trinity College Dublin

Part 1: Post Implementation Review: Background

# Background to the Review

## Purpose

1. This Post Implementation Review (PIR) of The Legal Deposit Libraries (Non-Print Works) Regulations 2013 (the NPLD Regulations) aims to evaluate the success of the Regulations against the policy objectives by considering the extent to which the principal policy objective of ‘allowing preservation of non-print publications for future generations’ has been achieved by the implementation of the Regulations, as well as determining the extent to which the following policy objectives have been addressed:
* 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 (LDLs).
* To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rightsholders.
* To facilitate long-term preservation, so that the material may continue to be accessed in future.
* To ensure long-term viability by requiring both Legal Deposit Libraries and publishers to share the responsibility for archiving without imposing an unreasonable burden on any institution.
1. Two other specific aspects are considered in this review:[[1]](#footnote-1)
* The extent to which the Regulations are appropriately compatible with any intervening reforms to copyright legislation and specifically to revisit the issue of restrictions on access to NPLD content following the expiry of copyright.
* To ensure that the embargo arrangements are working as intended and where imposed are fully justified.

## 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 (LDLs):
* British Library (BL)
* Bodleian Library, Oxford (BOD)
* University Library, Cambridge (CUL)
* Library of Trinity College, Dublin (TCD)[[2]](#footnote-2)
* National Library of Wales (NLW)
* National Library of Scotland (NLS)[[3]](#footnote-3)
1. The Legal Deposit Libraries Act 2003 extended existing legal deposit provisions for printed material to cover non-print works, giving the Secretary of State for Culture, Media and Sport (‘Secretary of State’) the powers to make secondary legislation bringing new and emerging publishing media under its scope. After an extensive consultation period the Regulations came in to force 5th April 2013.

## Context in which this review takes place

1. Whilst this review is called a Post Implementation Review (PIR), it is important to note that the implementation is ongoing and that this PIR is taking place mid-implementation five years after the Regulations came into force. The complexity of the implementation means that it is not something that can be delivered over night; full implementation is inevitably a gradual process spread over many years.
2. In agreement with JCLD the Legal Deposit Implementation Group took the decision to split implementation of the NPLD Regulations into three phases. Based on the 80:20 principle, Phase 1 (completed March 2016) covered the most common and well-established digital publishing formats such as eBooks, eJournals and websites. Phase 2 (currently being implemented) and Phase 3 (currently being scoped) will deal with the smaller proportion of more complex digital publishing formats.
3. Phase 1, completed by March 2016, was designed to develop systems to collect, ingest and make available to all six LDLs standard content representing the most common material that would be useful to current researchers and future generations. This phase included:
* Building a central Digital Library Store (DLS) capable of preserving large volumes of digital material at the same time as providing secure access to content from all six libraries;
* Developing web harvesting tools to crawl the full extent of the internet to retrieve content from the open web that is in scope for deposit;
* Building a shared metadata aggregator from which all six libraries could pull metadata for incorporation into their own catalogues and resource discovery systems.
* Creating a secure infrastructure which allowed readers in each of the LDLs to access the deposited content in a manner aligned with the limitations set out in the Regulations. Namely: single concurrent use of an item within each institution; no digital download of the NPLD items; and no screen shots of the content.
* Developing print capability in all six institutions which worked with each of their locally managed print services.
* Creating and developing workflows for collecting and ingesting eJournal articles, and eBooks and the associated metadata.
* Creating and developing workflows for ingesting and indexing a very large number of websites.
* Working across the libraries to develop a collection policy for standard formats.
1. The Libraries have been working closely with the publishers of eBooks and eJournals to negotiate effective mechanisms for delivery of the content to the British Library. Most of the eBooks and eJournals ingested under Phase 1 have been collected following negotiation with the publisher and not harvested from the web.
2. The focus of collection in Phase 1 was to capture the output of the large publishers who publish in internationally agreed standard formats. This allowed the systems to be tested to scale in a way that collecting the more specialised material from small publishers would not have achieved. The advantage of this approach is a quicker realisation of predicted benefits for both the publishers and the libraries.
3. Phases 2 and 3 focus on the less standardised content which is more difficult to collect, ingest or access for one reason or another.
4. Phase 2 initially started in September 2015 parallel to continuing work in Phase 1 and is due to continue until March 2018. This phase includes:
* Delivering a platform to view born-digital maps and build the capability to ingest born-digital maps into the DLS.
* Collecting and making available born-digital maps from a selection of publishers.
* Creating and developing a workflow for ingesting and making available born-digital music scores and digital scores with accompanying sound files.
* Exploring the opportunities on the horizon with emerging formats including multimedia, supplementary material and data. These formats are most at risk of being transient and getting lost, but the complexities surrounding them make collecting and displaying them difficult.
* Building workflows for collecting and ingesting magazines and other material which is not supplied with metadata.
1. To date the capability to ingest born-digital maps is complete and the LDLs have been using the new platform since March 2017. A small number of born-digital maps are not compatible with the new platform and these will be investigated under the emerging formats work (currently being scoped in Phase 3). Likewise some of the born-digital music scores are created and delivered to the end user in proprietary software. An additional challenge is that there is no metadata standard for born-digital sheet music, and metadata needs to be assessed on a publisher-by-publisher basis. This makes developing the mechanisms for ingesting them difficult at this stage, and therefore this type of material will also fall into the emerging formats category, allowing the industry time to decide if there is a set format to be used to create digital sheet music.
2. Phase 3 has not started yet and the Legal Deposit Implementation Group is still scoping what will be covered. However, emerging formats and issues relating to collecting relevant software will be included. These publications are relatively small in number but are more complex and present major challenges to the implementation. This phase will also look into the complexities associated with collecting material which requires specialised software to view the content. The legislation allows for the deposit of the relevant software; however, it is not clear how the licensing of software can be handled since the licence needs to be perpetual. The publisher of the content may not be the publisher of the software, and may therefore not be the rightsholder nor be in a position to confer perpetual rights to the LDLs.

## Review Methodology

1. In its response to the 2012 public consultation, the Government committed to monitor the implementation of the NPLD Regulations for impact and effectiveness and to carry out a PIR and publish a report within five years of the Regulations coming into force.
2. The plan for the review was laid out in Annex 1 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (the FIA) which was compiled in June 2012.

### Review approach and rationale

1. As set out in the FIA the primary focus of the PIR is to determine whether the policy, and by extension the Regulations, has had the intended effect. In order to make that assessment the review addresses the following questions.
* To what extent has the policy achieved its objectives?
* To what extent have there been unintended consequences?
1. In addition, the review also considers the extent to which there is scope for simplification or improvement.
2. Stakeholder views and evidence from relevant sectors forms the basis of the review. JCLD has collected appropriate qualitative and quantitative data wherever possible to support an assessment of the impact of NPLD and the delivery of policy objectives.
3. The FIA made reference to the review including collection of data on actual costs and savings for businesses of all sizes so that DCMS can fully review the impact of the Regulations on the publishing sector. As this type of data is not routinely gathered by all publishers, it was not easy to collect in June 2012 for the FIA and further difficulty has been experienced in collecting this level of data in preparation for the PIR. However a survey of publishers, to which 121 responses were received, can provide some degree of information.
4. The FIA also states that the data collected should enable the effective assessment of whether the anticipated benefits for publishers, LDLs, researchers and a scholars, as well as for UK society as a whole, have been realised. This includes the assessment of the number of non-print works deposited, against the estimated number of overall publications which may be subject to legal deposit.
5. As stated as on objective in the FIA two other aspects considered in the PIR will be:
* The extent to which the Regulations are appropriately compatible with any intervening reforms to copyright legislation and specifically to revisit the issue of restrictions on access to NPLD content following the expiry of copyright; and
* To ensure that the embargo arrangements are working as intended and where imposed are fully justified.[[4]](#footnote-4)
1. Additionally, should the review highlight the need for changes to the DCMS Guidance on the Regulations,[[5]](#footnote-5) consideration will be given to the appropriate revisions.

### Data Collection

1. Wherever possible automatic data collection and consolidation has been in progress since the Regulations came into force. Management information has been a key component of the NPLD workflows. Data on the number of items ingested has been collected and then manual data analysis of these figures compared to legal deposit material collected in print has been carried out. For certain collection material this kind of analysis is not possible, for example where there is not a print equivalent, as for the web archive or digital-only content.
2. Automatic tools have been created to record usage statistics and manual tests across each of the six libraries are regularly carried out to detect anomalies in access across sites.
3. In the FIA the methods used for assessing potential costs to the publishing industry were not straight forward and the figures resulting from that assessment showed a large variation in potential costs. This was due in part to the large differences between small publishers and large publishers, and in part the very small number of detailed responses from consultations.
4. Therefore in compiling this PIR it has been very difficult to accurately compare the actual costs against the predicted costs. However, a questionnaire relating to the benefit realisation of NPLD was sent to 493 publishers for whom we had live contact details and 121 responses were returned, representing a response rate of 24.5%.
5. The questionnaire (see Appendix A) created had 18 questions and took approximately five minutes to complete. It was sent to every publisher who had used, or registered to use, the British Library Publisher portal to deposit NPLD material; as well as all the larger publishers that have transitioned from print deposit to electronic deposit and who have a direct relationship with the British Library. An incentive of British Library exhibition tickets was used to encourage participation in the survey.
6. User stories from readers were also collected. However, since researchers tend to use NPLD material as one small part of their overall research, responses are limited and may not reflect users as a whole. In addition, views of users of the web archives were sought; again the response was low owing to the very limited use of web archives currently, and therefore the views can only be recorded as individual case studies rather than as representative views of a whole community.
7. It is important to note, as stated already, that at this point in NPLD implementation the benefits highlighted for the libraries may not be realised yet, as many of the benefits are not expected to materialise in the first 10 years post regulation.

Part 2: Post Implementation Review: Evidence Base

# Background and context

1. In order to assess the impact of the regulations it is important to note that a lot of data is reported annually, and therefore most analysis will be based on findings up to the end of the financial year 2016­–17.
2. At the end of March 2017, four years after the Regulations came into force, the Legal Deposit Libraries had collected 140,000 eBooks, 2.5 million eJournal articles and 470 TB of archived web which is made up of about 10 million websites and 6 billion objects. Evidence shows many of these websites would have been lost to future generations without this comprehensive collection.[[6]](#footnote-6),[[7]](#footnote-7),[[8]](#footnote-8),[[9]](#footnote-9)
3. This has been achieved by working with publishers to negotiate transition to digital deposit via a direct feed to the British Library or via a third party such as Ingrams for eBooks and Portico for eJournals or, in the case of the websites, developing a web harvesting tool which can crawl the web collecting the relevant web pages that are liable under the Regulations. Certain grey literature such as official publications has become electronic only and is being harvested from websites using a document harvester. This grey literature is then stored as individual items within the NPLD collection and is viewable in each LDL reading room without searching through the web archive.
4. Once collected this corpus of material is stored securely. In order to achieve the secure preservation of the content as directed in the Regulations the British Library, on behalf of all the Legal Deposit Libraries built a sophisticated Digital Library Store (DLS) which replicates the content over four nodes held in Aberystwyth at the National Library of Wales; Edinburgh at the National Library of Scotland; and Boston Spa and London, both British Library sites.
5. Content is securely accessible from each of the six Legal Deposit Libraries and is limited to a single concurrent user at each library. This is achieved using a technical solution, Ericom, which prevents digital downloading by emulating a remote desktop, thus ensuring that the content is never held on the terminal the reader is using but is streamed as a live video to the reader.
6. Printing, in accordance with copyright legislation, is permitted and is available in each of the Legal Deposit Libraries.
7. The resources required to implement this regulation have been extensive and the implementation has taken some time. Initially the focus was on the bulk of content such as eBooks, eJournals and websites but in September 2015 Phase 2 of implementation started, and that included looking at collecting born-digital sheet music, born-digital maps and other non-standard formats. The Legal Deposit Libraries started collecting born-digital maps from Ordnance Survey (OS) ahead of the Regulations on a voluntary basis which continued when the Regulations came in to force. In March 2017 a project to allow the Legal Deposit Libraries to collect and access born-digital mapping in other formats and from other publishers was completed. Over the coming years digital map publishers will be approached to deposit more content.
8. The JCLD, set-up as part of the 2003 Act, has continued to provide a forum for publishers and libraries to discuss their shared responsibilities. Notably, in the four years since the Regulations came into force there has not been a single reference to any disputes under the dispute resolution process established under the Regulations. The independent arbitrator appointed to JCLD has played an important role as an observer to JCLD meetings and has had a crucial role in the PIR process. Full details can be found in Appendix B.

# To what extent have the original policy objectives been achieved?

1. The principal objective of the Regulations is to allow the preservation of non-print publications for future generations. This should be achieved by meeting 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 rightsholders.
* To facilitate long-term preservation, so that the material may continue to be accessed in future.
* To ensure long-term viability by requiring both Legal Deposit Libraries and publishers to share the responsibility for archiving without imposing an unreasonable burden on any institution.

The extent to which each of above policy objectives are being met are detailed below, but in summary the review findings are as follows:

* the collection of legal deposit serials and monographs digitally at the end of Year 4 has exceeded the figure anticipated for the end of Year 5
* much of the Legal Deposit Web Archive material collected has already been removed from the live web and would have been lost to future generations of researchers had it not been collected under the NPLD Regulations
* the policy objective of ensuring a national collection of non-print publications is broadly being achieved for websites, eBooks, eJournals and born-digital mapping
* the LDLs have a single shared infrastructure which allows them to share efficiencies in the collection, archiving and preservation of the legal deposit material. Collecting, storing and preserving the content once instead of six times results in a much more efficient system.
* an efficient system of NPLD collection and deposit has been achieved and the existing arrangements have led to cost savings.
* the long-term preservation of the NPLD content is being carried out in line with the regulations and in an exemplary, world leading manner

To ensure a national collection of non-print publications

1. Estimates of how much material of different types should be collected in a given period were produced for the Final Impact Assessment (FIA). It was estimated that in Year 1, 60,000 to 80,000 monographs and serial parts should be harvested or deposited by mutual agreement, processed and archived. By Year 5 this should rise to approximately 100,000 to 140,000 monographs and serial parts per annum representing about 18–26% of the potential universe of publications eligible for deposit. And by Year 10 this figure should be approximately 220,000 to 300,000 monographs and serial parts per annum representing 40–50% of the potential universe of publications eligible for deposit.
2. Prior to the regulations all assumptions and metrics described in the FIA were based on what was known in the print world and how that might be translated into the digital world. Printed serials are deposited at the Legal Deposit Libraries in full issues, usually monthly, quarterly or weekly. However, the digital editions of serials are mainly deposited as individual articles. Therefore when recording data on the number of items processed within the library it is recorded at an article level and as such the resulting figures will be considerably higher than predicted in the FIA. In order to make any comparisons between the FIA estimates and the actual number of articles deposited, based on library sampling, we have estimated the average number of articles in a periodical issue to be 14.
3. Owing to developments in systems, early ingest figures are not available; however, the first figures available from August 2014 show the total number of items ingested between April 2013 and August 2014.



Figure 1. The cumulative number of eJournal articles ingested into the DLS. Figures for August 14 include all articles ingested between April 2013 and August 2014. Although analysis through this document makes use of the data for full financial years this figure shows the ingest statistics up to and including September 2017.



Figure 2. The cumulative number of monographs ingested into the DLS. No monographs were ingested prior to July 2014 as the workflows were not in place and agreements with publishers for deposit had not been made. Although analysis through this document make use of the data for full financial years this figure shows the ingest statistics up to and including December 2017.

1. Figures 1 and 2 show that at the end of Year 1 the Legal Deposit Libraries had collected 412,000 articles (approx. 29,400 issues) plus 5,500 monographs through mutual agreement deposit. In addition to this the libraries had collected 31TB of websites. The Year 1, estimates in the original FIA suggested approximately 60,000 to 80,000 publications (monographs and serial parts) would be harvested or deposited by mutual agreement, processed and archived. New workflows were developed in this period of time and negotiations with publishers were in their infancy, so the initial figures were lower than estimated.
2. However, as the processes became embedded and publishers were eager to transition, the pace of ingest increased and by March 2017, Year 4 of implementation, the total material ingested has risen to 2.7 million articles (192,000 issues) and 130,000 monographs. Of these items, 79,000 monographs and 1.3 million articles (93,000 issues) were deposited, processed and archived in the year 2016/17 which exceeds the Year 5 targets by approximately 23%. By the end of Year 4 annual ingest rates are higher than predicted by the original FIA Table 1.

*Table 1. The actual number of monograph and serials ingested compared to the projected figures presented in the FIA*



1. The FIA makes reference to a certain number of publications representing percentages of the potential universe of publications eligible for deposit.[[10]](#footnote-10) It is not known where the calculation for the known universe came from or how it is reflected in the number of monograph and serial parts. The potential digital universe is difficult to calculate, as exact information about digital publications is not available in the same way as in the print publications world. So we cannot say accurately what percentage of the digital universe we are obtaining. However, we can calculate the transition rate from print to digital, based on the number of NPLD items ingested as a percentage of the total legal deposit items received.
2. The British Library has collected data over the last two years on the number of legal deposit items deposited electronically and in print. In order to calculate the percentage of legal deposit collected digitally the libraries have taken the number of serial titles deposited electronically and divided by the total number of serial titles received under legal deposit to give a percentage. This has been repeated for monographs and the results can be seen in Table 2.

**Table 2. The percentage of legal deposit titles which have transitioned from print to digital deposit.***[[11]](#footnote-11)*



1. The rate of growth of NPLD serial titles has slowed and will continue to slow over the coming years as the libraries have already transitioned the larger publishers who produce the largest number of serial titles. As the libraries start collecting from the smaller publishers, the long tail of publications, the amount of work per publication will increase. This is due to the fact that negotiations with publishers and production of a workflow to normalise content requires the same level of manual input regardless of the number of publications that a publisher has.
2. By the end of Year 4, 35% of legal deposit serials and 58% of legal deposit monographs are collected digitally. These figures exceed the Year 5 figures in the FIA, which suggests that the LDLs should be collecting 18–26% of potential serial and monograph publications eligible for deposit by Year 5 (Table 3).***[[12]](#footnote-12)***

Table 3. The percentage of legal deposit material which is collected digitally



1. Collection of magazine content is lower than hoped by both Publishers and Legal Deposit Libraries at this stage, owing to the lack of systems in place to collect or deposit this material. Currently there is no standard format for digital magazines, or consistent metadata production and the British Library workflows are not sufficiently developed to deal with publications without metadata. JCLD are monitoring the situation and Publishers and the Legal Deposit Libraries are working together to find a solution. This material i­­­­­s still being collected in print and therefore there is, as yet, no loss from the national collection; however, the predicted benefits to the Publishers by transitioning to digital deposit cannot be realised at this point in the NPLD implementation.
2. Collection of newspapers in digital form has not proceeded. The news websites are harvested daily, but the web version of a newspaper does not necessarily replicate the print version and thus cannot be a surrogate for legal deposit purposes. The libraries currently collect both. In December 2012, prior to the Regulations, a joint approach was made to DCMS seeking an amendment to the 2003 Act which would allow a digital substitute (for example a pre-print PDF) of the newspaper issue to be deposited instead of the printed artefact. Although DCMS supported the proposal in principle they did not see any legislative opportunity to implement the change.
3. At the time an alternative suggestion was made whereby pre-print PDFs could be made available online to purchasers for a limited time, ‘kiosk publishing’, which would enable them to qualify for deposit under the NPLD Regulations and affording them all the relevant protections. Unfortunately the ‘kiosk publishing’ suggestion was financially prohibitive for the LDLs, and therefore currently digital facsimiles of printed newspapers are not being collected.
4. At present this does not represent a gap in the collection as the items are still collected in print; however, it may represent a gap in the future as preservation of printed newspapers is expensive and resource heavy as it relies on digitisation of the printed version before the paper deteriorates.
5. In addition to the monographs and periodicals a total of 470TB of Legal Deposit UK Web Archive has been collected, representing 10 million websites and 6 billion objects where an object is an image or a page of text. Much of this material has already been removed from the live web[[13]](#footnote-13) and would therefore have been lost to future generations of researchers had it not been collected under the NPLD Regulations (see paragraph 117).
6. Since 1998 the Legal Deposit Libraries have been collecting born-digital OS maps under a voluntary arrangement. In March 2017 a new platform was completed allowing the Legal Deposit Libraries to collect and display other born-digital map content under NPLD from other publishers. The total number of map datasets available in the LDL reading rooms is currently 47, and this is expected to rise by two or three publishers per year over the next four years.
7. In the case of born-digital mapping, the cost associated with first ingesting the map content to the mapping platform and then the subsequent cost of ingesting it to the DLS means that this content will be ingested over time and therefore the LDLs do not presently have a comprehensive collection. Currently the libraries hold content from approximately 15% of the born-digital map publishers in the UK including Ordnance Survey Great Britain (OSGB) and Ordnance Survey Northern Ireland (OSNI) who produce some of the most detailed mapping and largest data volumes that will be ingested into the system. Content from other born-digital map publishers will build up over the coming years as funds allow.
8. In conclusion the policy objective of ensuring a national collection of non-print publications is broadly being achieved for websites, eBooks, eJournals and born-digital mapping. However, the fact that implementation of the Regulations is phased means that there are definite gaps in the digital collection. Where possible those gaps are being filled with existing print deposits, and the collection policy[[14]](#footnote-14) is now focused on ensuring digital-only material is prioritised over material which is also available in print. To date publishers who produce material both digitally and in print have transitioned despite the fact that this material may not have been the greatest at-risk content. The reason for this was the need to transition large quantities of material to test systems and workflows at scale. Additionally, this was where the greatest benefits to large scale academic and research publishers would be realised.
9. It is also clear, in the rapidly changing environment of digital publications, that monitoring by the libraries and JCLD is essential to ensure that emerging formats are recognised and systematically collected.
10. As digital publications become more dynamic and interactive they move away from being just text- based. Technologies exist and are constantly being developed which allow the reader to explore books in a way not envisaged 10 years ago. This material may require a particular platform or application to render the content accessible; in such cases it may not be possible or cost-effective for the LDLs to recreate that platform in the DLS. The software or platform required to render the content may not be owned by the publisher, and in such situations they may not have the right to grant the LDLs access to the platform to recreate it. If situations like this arise in the future it may be necessary to explore ways of accessing the complex content from the publisher’s platform whilst archiving a copy within the DLS. The version stored in the DLS may not completely replicate the publisher’s intended output, but the text-based information and related coding would be retrievable if it was required to restore the publisher’s lost data. This in itself will result in complex preservation requirements.

## To enable an efficient system in which material is archived and preserved in the Legal Deposit Libraries

1. The LDLs have a single shared infrastructure which allows them to share efficiencies in the collection, archiving and preservation of the legal deposit material. Collecting, storing and preserving the content once instead of six times results in a much more efficient system.
2. Harvesting web pages from web sites is very efficient as the web harvest tools allow large volumes of material to be crawled at once. There are still efficiencies to be made in indexing and ingesting into the DLS but these developments are ongoing and will continue in perpetuity as the British Library web team are constantly developing new tools and improving the systems.
3. For the types of material that are being collected under Phase 1 of implementation the quantity that has been collected, archived and preserved in four years shows that an efficient system of NPLD collection and deposit has been achieved. Further efficiencies will be made over time but complexities around the diversity of content and the changing environment in which the material is collected means that the system is in a constant phase of R&D.
4. Although too early to determine whether long-term savings for the libraries and all sectors of the publishing industry can materialise, the existing arrangements have to-date led to cost savings for publishers and libraries as documented in the assessment of benefits section. In the case of the publishers, cost savings have arisen due to efficiencies in staffing, printing and shipping costs, and administration costs. For libraries, cost saving efficiencies have been realised in the processing and storing of digital legal deposit material compared to print to the value of £5million in the first four years of implementation.
5. Without appropriate funding the LDLs will be unable to realise the relevant advantages afforded by new technology and ensure as much content as possible can be collected and preserved.

## **To govern how the deposited copies may be used, balancing the needs of libraries and** researchers with the interests of publishers and rightsholders

1. JCLD are confident that for the vast majority of the commercially published material deposited, the needs of libraries, researchers, publishers and rightsholders have been adequately met. There is a good balance between protecting the commercial interests of the publishers and rightsholders on the one hand, and the required use of material by researchers on the other. JCLD are satisfied that the rights of the content owners are protected with the technical measures in place such as single concurrent access, no digital copying and no off site access to this content.
2. However, with regard to access to the NPLD web archive and certain educational copyright exemptions, there remain differences of opinion among publishers and librarians around the degree to which this objective has been met. These opinions are explored in Parts 3a the Libraries’ submission and 3b the Publishers’ submission

## **To facilitate long-term preservation, so that the material may continue to be accessed in** future

1. Unlike other aspects of the legal deposit Regulations, preservation actions for NPLD are concentrated at the British Library. The British Library’s digital preservation strategy defines the Library’s approach to preserving its digital collection content, including NPLD items. The accompanying digital preservation policy identifies the principles that enable consistent and efficient management and preservation of the collections throughout the digital content lifecycle, from acquisition to access.
2. NPLD content is securely stored in a dedicated and secure digital repository that is regularly audited against ISO standards for assurance of compliance with best practice. Technical processes are in place to ensure that files remain free from inadvertent corruption (bitrot), and metadata is stored in a linked repository to enable identification of appropriate viewing software for access by users within reading rooms.
3. The British Library maintains a proactive technical research and development programme to ensure that files will remain accessible to future readers long after current viewing software has become obsolete.
4. The Legal Deposit Libraries invited the Digital Preservation Coalition (DPC) to offer external validation of the digital preservation actions that they undertake to deliver their commitment to the NPLD Regulations 2013. These Regulations implement the 2003 Act which, among other things makes provision about the ‘use and preservation of material deposited, and the use by deposited libraries as well as reader access’ for NPLD collections.
5. Unlike other aspects of the legal deposit Regulations, preservation actions for NPLD are concentrated at the British Library, so the assessment focused particularly on digital preservation workflows and capabilities of the British Library. The DPC therefore assessed digital preservation processes at the British Library as they are applied to NPLD collections (see Appendix C).
6. The assessment took the form of two separate investigations, one in March 2017 followed by a period of time for the British Library to carry out any recommendations suggested by the DPC, and a follow-up review in September 2017, to determine to what extent the Legal Deposit Libraries had taken action to remedy any issues identified in the first investigation.
7. The LDLs have been subject to a rigorous independent review based on international standards to assess the effectiveness of digital preservation as applied to the NPLD collections. The assessors overall impression was one of excellence with the significant conclusions detailed below.
* Much of the British Library’s digital preservation expertise has been found to be exemplary. The British Library has been a world leader and has led the way in many aspects of digital preservation. This expertise is wisely and consistently brought to bear on the preservation of NPLD collections in fulfilment of the preservation requirements outlined in the NPLD Regulations.
* The scale and complexity of the challenge which the preservation of NPLD collections generates should not be underestimated. Moreover it represents a continuously evolving challenge for the British Library on behalf of the LDLs; resources, skills and technology need constant renewal.
* Legal Deposit Libraries resources have been appropriately prioritised on the larger content streams which were tackled first. Focus is now moving to addressing the smaller but more complex/interactive streams.
* The LDLs responded quickly to recommendations for improvement and in the assessor’s view the LDLs have demonstrated a firm commitment to continuous quality improvement.[[15]](#footnote-15)
1. In conclusion, JCLD are satisfied that long-term preservation of the NPLD content is a priority for the LDLs and is being carried out in line with the regulations and in an exemplary, word leading manner.

## To ensure long-term viability by requiring both Legal Deposit Libraries and publishers to share the responsibility for archiving without imposing an unreasonable burden on any institution

1. As described in the FIA the share of responsibility for archiving falls on both the publishers and the libraries. So far, the Libraries and Publishers have worked together closely to ensure that transition to NPLD has run smoothly. It was also clearly outlined in the FIA what the costs to the public sector would be for implementing these Regulations. These costings have proved to be correct (see cost analysis later in the document) and the costs will continue to be incurred. Unfortunately, as more content is collected the costs will rise as the libraries take into account the full ‘lifetime’ costs of acquiring, preserving and guaranteeing continuity of access to the digital publications. This is not currently reflected in the funding received by the British Library from Government which has declined since the Regulations were put in force.
2. JCLD feel strongly that the long-term viability of NPLD development may be at risk if adequate funding for such a large digital resource is not maintained.

# Assessment of Costs

1. In assessing costs there are two areas that need to be considered. These are (a) costs to the publishers in complying with the NPLD Regulations and (b) costs for the Legal Deposit Libraries as they expand the remit of their collections. This section explores the evidence relating to those costs.

## Cost to Publishers

1. There are two main costs to publishers in complying with the NPLD Regulations: initial set-up costs associated with adapting workflows and IT systems to cope with deposit or harvest; and the ongoing running costs of depositing digital content.
2. In the FIA, DCMS had anticipated costs to publishers to be as shown in Table 4. These costs were calculated based upon a survey carried out by the Publishers Association in support of an earlier impact assessment. They estimated that the publishers’ average administrative burden for depositing on-line content would typically be between £3 and £6.50 per deposit with an initial set-up cost of between £1,300 and £2,000 per publisher, although it was acknowledged that there would be significant variations between individual publishers. Combining the number of publishers[[16]](#footnote-16) with the initial set-up costs, and the size of the harvesting target with costs per deposit creates an estimate of the burden that the preferred option would place on business.

**Table 4. Predicted costs to the publishing business in terms of public value (PV)**



1. In order to calculate the actual costs experienced by the publishers it was not feasible to replicate the methods used in the FIA, so the actual costs were ascertained as described below.
2. The British Library has relationships with over 500 traditional publishers who deposit their content digitally via a third party such as Ingrams or Portico; directly as a digital feed to the British Library; or using the bespoke publisher portal.
3. A questionnaire (see Appendix A) was sent from JCLD to 527 publishers asking for their input to the review. Of the 527 sent 34 did not reach a recipient. Of the remaining 493, 121 responded resulting in a 24.5% response rate. The responders were categorised by company size, based on the number of employees, from micro to large as shown in Table 5.

**Table 5. Responses to the questionnaire sent to publishers: proportion of responses from each of the business size categories**



1. This break down reflects the publishers the survey was sent to; the response rate was proportionally similar across all publishers, i.e. 19 responses from the 70 medium to large publishers receiving the survey and 102 responses from the 423 micro-small publishers receiving the survey.
2. Publishers were asked for details of the level of costs incurred during the set-up process. All responders answered and 82% reported that they incurred no costs. Of the 10 responders who supplied estimated set-up costs, seven were micro companies and they reported set-up costs in the range <£49 to £1,000. The three large companies who responded to say they had incurred costs reported costs in the region of £1,000—5,000 for two and >£5,000 for one publisher.
3. Since the majority of companies surveyed reported they incurred no set-up costs it is assumed that the set-up costs were not too onerous and were absorbed into normal business. It is difficult therefore to compare the actual figures with projected figures in the original FIA. The projected figures estimate that set-up for the whole publishing industry will cost between £1.9m and £4.0 m over the first 10 years.[[17]](#footnote-17) Based on the figures provided in the survey, these projections would need to be revised downwards. If the figures provided by the 10 respondents who gave costs were representative of the whole industry then the figures would be revised down to between £0.28m and £2.14m for the set-up for the first 10 years. If, as the survey suggests, it is only 11% of publishers who incur costs then this would be revised down to between £31k and £235K.
4. Given the wide difference between the projected figure and that estimated from the results of the questionnaire survey, it is probably safe to assume that the actual costs incurred by the publishing industry to set-up NPLD is somewhere between £30,000 and £2m, but it is not possible to be more accurate at this point.
5. The publishers were not asked directly about the costs of depositing electronically, but they were asked whether they could quantify the costs of depositing in print and the efficiencies of transitioning to NPLD. These responses will be discussed under Benefits to Publishers later in the PIR. However, a flaw in this methodology lies in the small number of publishers (11 in total) who considered themselves digital-only publishers and therefore could not quantify efficiencies since they would not previously have been liable for deposit. All of those 11 publishers were in the micro business category and deposited fewer than 10 publications per year.
6. Publishers of websites, the largest NPLD collection, do not have costs associated with deposit as the British Library crawls their website harvesting relevant web pages.
7. During the consultation in 2012 publisher respondents considered that the scale of administrative costs linked to web harvest might depend upon:
* Whether the process for providing relevant login details for web harvesting would differ from provision for other customers.
* The effect of web harvesting on bandwidth use and server performance, depending on timing and frequency of requests (if an issue there could be costs attached to upgrading IT infrastructure).
* Whether work would be needed in some cases to prevent access to areas containing personal or confidential data.17
1. Four years on, none of these concerns have materialised so the predicted costs have not arisen. The concern raised in the first bullet point has not been tested since the British Library has not systematically collected from behind paywalls but the proof of concept developed to do this does not require a level of service that differs from other subscription management on the part of the publisher.

## Cost to Legal Deposit Libraries

1. The FIA[[18]](#footnote-18) assumes that the implementation of the Regulations will cause costs to arise in the public sector as well as imposing a cost on business. There are two types of costs to Legal Deposit Libraries associated with NPLD. These are (a) initial system set-up costs associated with building the digital infrastructure to collect and harvest digital material and (b) the ongoing costs associated with running and maintaining the digital infrastructure and workflows.

### System set-up costs.

1. In the FIA system set-up costs focused on the cost of developing a system to harvest content from behind paywalls and setting up systems for operating access restrictions within the Legal Deposit Libraries. The estimated total of these transitional costs was predicted to be in the range of £2.1–£2.9m over the appraisal period (10 years).
2. In reality, whilst a large amount of content is harvested from the open web by means of an automated web harvester, there is also a large amount of digital material which is not harvested but collected via manual workflows. Traditional publishing formats which have transitioned to digital, such as eBooks and eJournals, have been deposited directly or via a third party with the British Library. This means that the set-up costs also have to include development of workflows to take in multiple content streams simultaneously into the DLS.
3. In addition, the cost to develop a DLS which could be accessed by all six Legal Deposit Libraries does not appear to have been considered in the original impact assessment. The figures for developing such a store have been included in these costings to show the financial impact upon the public sector.
4. Work on the DLS started as soon as the 2003 Act was passed, and set-up costs continue for new content types. Therefore set-up costs have been incurred for a period of 14 years, as shown in Table 6.

#### ***Table 6. Actual set-up costs for libraries associated with NPLD***

\* Including the costs associated with development of loaders and digital workflows to deal with digital material which ids deposited rather than harvested. PV: public value; FYE: financial year end.

1. When you exclude the cost of the DLS, as the original impact assessment did, the set-up costs are £1.3 million over the first four years which is in line with the estimated cost of between £0.7m and £1m for the first three years of operation.

### Costs of ongoing harvesting, collecting and archiving.

1. Many assumptions were made about the harvesting of publications from the web which have not been borne out in reality. Websites are harvested on a regular basis, depending on the content type and the frequency with which it changes. Rapidly changing news sites will be harvested daily whilst most other content will be harvested annually or monthly, depending on the nature of the site. Official Publications and other similar grey literature will be harvested automatically from websites wherever possible to reduce the burden of manually extracting this content. However, publications behind paywalls or membership barriers are not routinely collected using the web harvester. This is because the libraries and the publishers have negotiated deposit arrangements for commercially available publications whereby the publishers deposit this content directly with the British Library or via a third party aggregator such as Portico for eJournals or Ingrams for eBooks. As the publishing industry already uses these aggregators for commercial digital distribution services, there is a major efficiency for the publishers in integrating their NPLD obligations into existing work streams. There is also a major efficiency for the libraries in having large volumes of content from different publishers ingested through a single ingest stream.
2. The original predictions of ongoing costs in the FIA are shown in Table 7. These figures were based on estimates from the British Library in 2012. At that point the costs were simply separated into three main areas: web harvesting of online content, web harvesting of e-publications and infrastructure operating costs.

**Table 7. Predicted ongoing harvesting and archiving costs of NPLD for Legal Deposit Libraries, as estimated in the FIA**



1. For the reasons described in paragraph 95 the processes are not exactly as expected and therefore the estimates provided in Table 7 cannot accurately be mapped to the actual costs presented in Table 8. There are additional costs for the libraries in managing the individual relationships with publishers and aggregators which includes all the costs associated with acquisition and claims, along with validation and metadata processing. This is shown as Business support or Collection Metadata on Table 8. Another cost which has been itemised is preservation of the digital content. This was not itemised in the original FIA but is an important part of the NPLD workflows and therefore should be taken into account when considering the costs to date and the costs to the public purse for the future.

**Table 8. Actual ongoing harvesting, collecting and archiving costs of NPLD for Legal Deposit Libraries 2013-2017**



\*e-publication harvesting is more accurately described as content processing since the libraries do not harvest e-publications. It is referred to within the text as content processing but called e-publication harvesting here to enable better comparison with the data presented in the FIA and Table 7.

1. The costs in Table 8 are those managed by the British Library on behalf of all six LDLs and do not take into account any extra costs incurred locally by the other LDLs. Owing to different workflows and accounting practices it is difficult to attribute costs to the same categories across each library. In order to present the full costs, Table 9 shows data about locally incurred costs collected from the other five libraries. Some costs are annualised for clarity and all costs are evenly distributed across all four years regardless of when the money was spent.

**Table 9. Summary of additional ongoing costs to date to the other Legal Deposit Libraries**



1. By adding together the costs in Tables 8 and 9 we get an accurate assessment of what NPLD implementation has cost in practice (Shown Below in Table 10). Compared with those presented in the FIA (Table 7), the actual ongoing costs for collecting and archiving NPLD material is lower than the predicted costs over the four-year period. The total for the four year period is £0.23m lower than the estimated low ongoing cost and £0.86m lower than the estimated high ongoing cost for Year 1 alone.

Table 10. Showing an accurate assessment of the total cost of NPLD implementation across all the LDLs



## Future costs of NPLD

1. Based on the known costs over the last four years an estimation of the costs for the following 10 years can be made, as shown in Table 11. It is important to note that it is difficult to estimate all costs associated with a rapidly changing environment so the predictions are based on what we currently know and include elements such as the redevelopment of the existing DLS. Storage costs are based on today’s figures despite the probability that digital storage costs will decrease. All other costs are based on 2017 prices and have been adjusted according to the Governments Annualised GDP deflator to calculate future costs. One-off replacement costs, which would have been classed as set-up costs in the FIA, have been included in the 10-year prediction because some components of the systems are already nearing end of life. Plans are already in hand to carry these major infrastructure replacement projects forward.
2. The replacement infrastructure should reduce the burden on library costs, including IT support by improving ingest workflows; reducing manual intervention; increasing automated workflows and replacing bespoke, resource intensive systems.
3. Future content processing costs outlined in Table 11 includes the processing of all digital publications such as websites, eBooks, eJournal articles, maps, born-digital music and emerging formats. As some of the processes are not format-specific is it more useful to collate all the digital processes into an aggregated content processing cost rather than to break them down into separate streams as shown in earlier cost calculations.
4. The profile of estimated costs of NLPD for the remainder of the 10-year period since the introduction of the Regulations indicates that the annual costs will be in line with those anticipated in the final impact assessment. In fact the reviews estimates the annual cost for Year 10 to be £2.39m compared to original estimate in the range of £2.32m - £3.22m.

**Table 11. Estimated costs for the next 10 years of NPLD**



# Restrictions on use of material

1. The material archived through legal deposit may only be used in ways that are permitted by the 2003 Act and through the NPLD Regulations. The Regulations replicate the de facto limitations in the use of printed works, i.e. one single simultaneous user of an item in each of the six libraries. Systems are in place to ensure compliance with these restrictions, and these are working well. The only problem which may arise in future concerns the technical difficulty associated with restricting concurrency to born-digital maps. This is not a problem at the moment, and JCLD are monitoring developments.

# Assessment of Benefits

1. There were a number of anticipated benefits, to Publishers and Libraries, articulated in the FIA arising from the Regulations as described below. Some of these benefits are assessed quantitatively, such as workflow efficiencies to Publishers which can be monetised. Others have more of a qualitative nature, such as social and educational benefits through the libraries, which are more difficult to evaluate at this stage.

## Benefits to Publishers

1. In 2012 it was anticipated that publishers would benefit from the NPLD Regulations because they would no longer need to submit hard copies of publications which were substantially the same as a non-print version, and that they would therefore have the potential to make efficiency savings. The total savings to publishers were estimated at £0.6–0.9m in Year 2 rising to £1.23m–1.7m in Year 5 and £1.9–2.6m in Year 10 as the number of publications submitted electronically increases. Total savings across the 10-year appraisal period outlined in the FIA were estimated to be in the range of £11.8–16.5m.
2. The methodology for creating these estimates is detailed in the FIA[[19]](#footnote-19) but similar methodology could not be used to assess the benefits realised by publishers who have transitioned. However, an assessment of the actual benefits was undertaken using the questionnaire described in paragraph 80 completed by publishers from across the spectrum of company size.

**When asked whether they had made any cost efficiencies in switching to NPLD, 62% reported that they had.** The 9% of respondents who indicated they had not made cost efficiencies fell into one of two categories: they were still depositing content in print, either in addition because they have not realised that they do not need to or because not all of their publications were available in digital format; or they were a digital-only organisation and therefore could not benefit from the transition from print to digital but had to comply with new Regulation they didn’t previously have. The remaining publishers were unsure whether they had made any efficiencies or had not quantified the cost before transitioning and therefore were unable to tell whether they had benefited.
3. Some micro publishers who have only ever deposited in digital form acknowledged that costs would be prohibitive if they had to deposit in print.
4. Publishers producing fewer than 50 items per year are encouraged to use the NPLD publisher portal to deposit their publications. These publishers reported a wide variety of savings as summarised above in paragraph 82.
5. Assumptions were made in the FIA that the larger publishers would see the greatest benefits from savings as a result of transitioning their existing print deposit to NPLD. In all there were 22 publishers from the responders who deposited more than 50 NPLD items, and the numbers varied from 50–99 up to >1,000 items. The level of savings reported was similarly varied as summarised in paragraph 82. In each case the level of savings per annum far exceeded the initial one-off set-up cost.
6. **These efficiencies arise from reductions in staff time, printing costs, shipping costs and administration.[[20]](#footnote-20) Most publishers have found the experience of transition to NPLD a positive one and would recommend transitioning to other publishers.**
7. It is difficult to analyse how these efficiencies compare with the figures presented in the FIA. In the FIA the impacts were monetised using calculations based on unit costs multiplied by the number of businesses affected. This requires an understanding of the number of businesses by size and publication type (Table 12) and calculated unit costs..

#### ***Table 12: Number of businesses by size and type of publication 2016*[[21]](#footnote-21)**

#### Number of businesses by size and type of publication 2016

1. Paragraph 77 describes the predicted costs and a similar calculation could be repeated using the updated Table 12. However, given the nature of the workflows publishers have introduced in practice, we have not collected the unit costs from each. It has not been possible therefore to replicate the FIA model of analysis.
2. It must be acknowledged that the figures in this table may exclude organisations such as universities, trade associations, professional bodies or research organisations where publishing is as a secondary activity, unless their publishing activity is registered as a separate business. Whilst this means that there may be uncertainty over the accuracy of the above figures, the figures in the table are the most accurate available to us, and many such organisations, as well as some of those for whom publishing is a primary activity, provide open access to their material, which could therefore be harvested directly by the Legal Deposit Libraries. Therefore it is reasonable to take the numbers in this table as a basis for calculations. The above table has been used in the calculations of the set-up costs over a 10-year period as described in the *Cost to Publishers* section.
3. Certain sectors of publishing, such as newspapers, magazine publishers, and born-digital music publishers, have not been able to take advantage of NPLD, either because the systems are not yet in place to collect and process these digital files or because the Regulations do not permit them to deposit a digital facsimile of what is issued to the public in print format. This work is in progress and these categories of publication are representative of the harder-to-deal with publications that will be dealt with in Phases 2 and 3 of implementation.

## Benefits to Legal Deposit Libraries

1. The main benefit to the Legal Deposit Libraries is the ability systematically to collect and make available an archive of non-print material that would otherwise be at risk of being lost to future generations. There is potentially a longer-term benefit in savings from efficiencies in managing digital materials as opposed to physical printed materials (e.g. no longer needing to process, store, retrieve and preserve printed material), as it is expected that the long-term costs of archiving and storing digital material will be lower than similar lifecycle costs associated with print. However, this potential benefit cannot be proven at this time.
2. Some of the benefits of collecting born-digital content are already apparent. There is evidence to show that web content which has been collected systematically since 2013 has already disappeared from the live web.[[22]](#footnote-22) Figure 3 shows the results of a study in 2015 looking at what percentage of items crawled were still available in their original location (see figure 3); even after only 24 months nearly 50% of the content crawled had gone completely, was missing or had moved. This amount increases year on year. Only a very small proportion of the web content which was collected in 2004 is still available on the live web. Therefore the benefit of preventing material being lost to future generations has already been demonstrated. There are many other ‘at risk’ born-digital publications that have not been collected yet, but this is a work in progress and it is too early to say whether these benefits have been fully realised.



Figure 3 The disappearance of websites over time. Where the dates are the dates the websites were crawled and the analysis relates to what was found in 2015 when a random selection of the archived websites were checked against their original URL location 22.

1. As noted in the FIA,[[23]](#footnote-23) and as discussed under *Assessment of Costs*, it is too early to determine whether the long-term cost savings for the libraries will materialise. The cost of implementing digital collecting is still relatively high, and the cost implication of preserving digital content in perpetuity is still unknown. The benefit of reduced requirement for physical space is already apparent, however, with 26,189 metres[[24]](#footnote-24) of shelving space already saved across all LDLs by the transition from print to digital over the last four years. It is not possible to calculate the cost of shelf space per metre as the costs vary considerably from library to library and within a library, as it is affected by the location and type of storage. However calculations have been made on the costs to each of the libraries if this material had been processed in print Table 13, totalling in excess of £5m by the fourth year.

**Table 13. The savings made by the LDLs owing to receiving this legal deposit material electronically instead of in print.**



## Benefits to Research and Scholarship

1. The FIA claimed that a general benefit of extending legal deposit to non-print would include 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 would benefit from a geographically distributed national published archive of national and international importance at six libraries, saving them time, costs of travel and subsistence.
2. On the whole these benefits are being realised or are on their way to realisation. But the Libraries and the Publishers discuss this point further in their separate documents in part 3 of this PIR.
3. The Regulations are resulting in a national and accessible archive of UK published material for use by the academic community, business, industry and private individuals. The fact that the UK has not one but six Legal Deposit Libraries spread across the UK and Republic of Ireland ensures that this material can be accessed at multiple geographically distributed sites. It is too early to see tangible benefits to the academic community as, until recently, the corpus of material was not large enough to make NPLD the first port of call for the content. As the volume of NPLD grows, particularly the rapidly vanishing content harvested from the open web, it will become a more significant resource for the research community.
4. The University of East Anglia (UEA) is running a project to look at the impact of NPLD entitled ‘Digital Library Futures: The Impact of E-Legal Deposit in the Academic Sector’. It is a two-year Arts and Humanities Research Council (AHRC)-funded project based in the school of Art, Media and American Studies at UEA, in collaboration with the University College London Department of Information Studies. The project team will work with the Bodleian Libraries and Cambridge University Library to investigate the impact of electronic legal deposit legislation upon UK academic deposit libraries and their users.[[25]](#footnote-25) Whilst this is too late for the PIR it will provide useful information regarding the benefits of NPLD to the scholarly community.

## Benefits to the UK

1. When the Regulations were introduced it was expected that extension of the 2003 Act would allow for the continued growth and maintenance of a comprehensive archive and record of the UK’s intellectual and scientific achievement, including the growth in digital content that was previously excluded by the existing Regulations. 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 other Legal Deposit Libraries and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them.
2. It is too early to assess the overall benefits to the UK, but certain benefits have already been realised. The British Library has world-leading experts in web archiving who are at the cutting edge of developing technology in web harvesting. The skills, tools and practices they have developed have helped web archiving communities across the world. They work collaboratively with other web archive architects across the world, who are also mandated to collect their nations’ websites. Additionally, digital preservation is carried out at an unprecedented scale and these activities are benefiting whole research communities who are improving tools and software as a consequence of the activities carried out on NPLD material.

# Assessment of Wider impacts

## Collection Processes

1. The collection model described in the FIA assumed that the LDLs would use the web harvester to collect material which was freely available on the web, as well as web materials subject to access controls such as paywalls or registration. Where the content was freely available the web harvester would simply visit the website and collect the content. Where the content was subject to access control, the request by the web harvester to the login page would be deemed to be a request for the content behind that login page. The publisher would have a notice period to provide login details to the deposit library to allow for the delivery of the access-restricted content, or to pro-actively negotiate an alternative method of delivery with the deposit library.
2. This model has not been wholly adopted by the libraries. The web harvester is used very successfully to collect freely available websites plus PDF documents which are not behind any access controls. However, where the content is subject to an access control, such as a login page or paywall, material is not currently collected. The LDLs have created a proof of concept to carry out this operation but it would be relatively labour-intensive. A more efficient collection process is by direct arrangement with the publishers. The publishers agree to set-up a digital feed directly to the British Library or via one of the aggregating partners, rather than the web harvester pulling the content from the website. To date the LDLs have not resorted to collecting the documents from an access-controlled website, but as they tackle the long tail of smaller publishers it will be important to have this option available. Work is still ongoing to improve this technology but it is very much a work in progress at this stage.

## Proportionality

1. There was and still remains a high level of sensitivity surrounding aspects of the NPLD Regulations for both Publishers and Libraries. At the time of the FIA there was little interest from stakeholders outside of these two groups. Now that researchers and scholars are using the material as a primary resource there is a heightened interest in both the existing Regulations and the review process.
2. There persist differing views between the Publishers and the libraries on several elements of the current Regulations, including long-term use of out-of-copyright works, and the alignment of the Regulations with Copyright, Designs and Patents Act 2014 exceptions.
3. Previous sensitivities around the risk of security breaches or copyright infringement of material deposited under legal deposit are still relevant but have been mitigated because of the collaboration to agree security measures and the continued vigilance and security audits of all the NPLD content.
4. There have been no recorded security breaches since the implementation of the Regulations. There have been potential security issues identified through routine audit processes, and these have been acted upon promptly by the Legal Deposit Libraries.

## Unintended consequences

1. Whilst many practical consequences of the Regulations were foreseen there have been additional consequences which have come to light as ingest of NPLD has scaled up.
Those agreed by JCLD are:
* Increased complexity of published content makes it difficult and costly to keep up to date with the rapidly changing technology environment.
* Constant phases of R&D mean that the anticipated reduction in system costs has not materialised.
* The sheer volume of content places a greater importance on automated integrity checking, but unfortunately not all the required tools exist yet. This requires both increased human intervention to process incoming materials and also increased development effort to design and develop the necessary tools. .
* The corpus of material is growing at such a rate that some software packages deployed have not previously been used at this scale, and problems are surfacing as the content grows.
* Moving a large number of books to eBooks has resulted in a higher-than-anticipated demand on library terminals at a time when libraries are otherwise reducing library PCs, due to the almost universal tendency of readers to work on their own laptops or devices.
1. Addressing these unintended consequences is work in progress and JCLD emphasise the importance of adequate funding from DCMS to ensure the practical implementation of the Regulations.

## Embargo Restriction

1. Under the Regulations, where publishers can demonstrate that access to deposited non-print material would conflict with normal exploitation of the work and prejudice commercial interests, the publisher may request a temporary embargo on access to that material for periods of up to three years. Eleven publishers have requested such embargoes, and in each case the embargo has been a reasonable request. At least one of these embargoes is for a period in excess of the three years but again the reason behind that request was considered by the libraries to be fair and reasonable so no arbitration was required.
2. Currently there is no technical solution for handling embargoes so they are handled by not ingesting the material into the DLS until the embargo is lifted. The content is collected and stored on a secure server but is not ingested into the DLS or replicated across the four nodes. This puts it at higher risk of loss. This situation is not ideal, as the content may not be preserved in the best way; therefore a technical solution is being sought and will be implemented as soon as possible.

# Recommendations for improving the Regulations

1. Whilst JCLD believe that the Regulations have worked well to date there are some areas where improvements could be made to strengthen the Regulations for the future. In addition to the recommendations outlined below, the Libraries and Publishers have compiled Part 3a and 3b outlining their own perspectives on areas they consider require further investigations.

## Collection of Newspapers and Magazines

### Proposed improvement:

1. JCLD consider that the Regulations would be improved by enabling the collection of newspapers and magazines in the form of pre-print PDFs or similar digital facsimile, which would deliver increased preservation capacity (as print newspapers are created with a short shelf life) and reduce the overall burden of collection on the Legal Deposit Libraries.
2. Previously this solution was rejected by DCMS on the grounds that the digital facsimile did not qualify as legal deposit since they were not the published artefact. However, we would strongly encourage a revisiting of this position in order to ensure that the Regulations remain future-proof and that the original policy objectives remain sustainable. There is JCLD agreement on this point (subject to legal assurances as per paragraph 140).
3. In particular, the objectives around facilitating long-term preservation of material and ensuring long-term viability of the system will both be threatened by the storage pressures faced by the BL National Newspaper Archive (legal deposit newspaper collection generates around 290m of shelving each year). Left unresolved, this will create a future requirement for new storage buildings as early as 2023[[26]](#footnote-26) at considerable cost to the public purse.[[27]](#footnote-27) The Regulations set out with a specific objective to enable an ‘efficient system in which material is archived and preserved’; it seems apparent that the current system could not be considered successful in regards to the archiving of legal deposit newspaper and magazine content.
4. There is a further user experience point in that the proposed solution would enable researchers and other users to access the content without needing to work with fragile physical newspapers, which are designed to be disposable.
5. Newspaper publishers stipulate that the collection of PDFs must be well governed from a copyright and revenue perspective. There are many legal, practical, and technological issues that have yet to be resolved, and further discussion is required around appropriate controls for external access to PDFs. Newspaper publishers envisage a central role for the Newspaper Licensing Agency in this context.



**Accessibility**

Proposed improvement:

1. The current Regulations do not take into account the newer legislation with regard to accessibility and equality.
2. Specifically, access for disabled users appears to be no longer fit for purpose as it does not give the same rights as those described in the Equality Act 2010[[28]](#footnote-28) or Special Educational Needs and Disability Act 2001. It is important that as world-leading institutions the Legal Deposit Libraries can demonstrate the best possible access for their disabled users and are compliant with all the best practice guidelines.
3. The Regulations allow the creation of an accessible copy for visually impaired people as defined by the Copyright, Designs and Patents Act 1988.[[29]](#footnote-29)

The definition is:

*‘Visually impaired person’ means a person—*

*who is blind;*

*who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;*

*who is unable, through physical disability, to hold or manipulate a book; or*

*who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.*

1. The NPLD Regulations contain their own provisions about the making of accessible copies, but they apply only to visually impaired people. paragraph 9 of the schedule to the new Copyright and Rights in Performances (Disability) Regulations 2014 provides that the definitions contained in old s31F of the 1988 Act continue to apply for the purposes of the legal deposit Regulations, and those preserved definitions include the definition of visually impaired.
2. This definition is far narrower than more recent guidelines and regulations, and means that some disabled users (e.g. those who are dyslexic) who are entitled to have an accessible copy of a print copy of printed legal deposit materials under the Copyright and Rights in Performances (Disability) Regulations 2014 are not entitled to have an accessible copy of NPLD material.
3. JCLD would like the current legislation to take into account the newer regulations with regard to accessibility, and that the legislation also keeps in line with any future accessibility recommendations.

Proposed Improvement

To update the NPLD Regulations to ensure they reflect newer accessibility, legislation and guidelines. And to ensure that the NPLD Regulations keep in line with any future accessibility recommendations.

1. As described on page 41 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012) [↑](#footnote-ref-1)
2. Trinity College Dublin has historically been entitled to receive a copy on request of all printed works published in the United Kingdom under the legal deposit scheme. This is a reciprocal arrangement whereby UK LDLs receive printed copies of all publications deposited in ROI under Irish Legal Deposit regulations. [↑](#footnote-ref-2)
3. The Act also confers rights for access to legal works deposited with NLS upon the Library of the Faculty of Advocates (‘FoA’) [↑](#footnote-ref-3)
4. Pg 41 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print works) Regulations 2013 (June 2012) [↑](#footnote-ref-4)
5. Guidance on the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (April 2013) [↑](#footnote-ref-5)
6. http://blogs.bl.uk/webarchive/2015/09/ten-years-of-the-uk-web-archive-what-have-we-saved.html [↑](#footnote-ref-6)
7. http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0167475 [↑](#footnote-ref-7)
8. http://www.nature.com/news/the-trouble-with-reference-rot-1.17465 [↑](#footnote-ref-8)
9. http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0115253 [↑](#footnote-ref-9)
10. Para 54—55 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print works) Regulations 2013 (June 2012) [↑](#footnote-ref-10)
11. Source: British Library Management Information stats provided annually as part of normal operations. [↑](#footnote-ref-11)
12. Paragraph 54, pg 13 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012) [↑](#footnote-ref-12)
13. http://blogs.bl.uk/webarchive/2015/09/ten-years-of-the-uk-web-archive-what-have-we-saved.html [↑](#footnote-ref-13)
14. http://www.bl.uk/aboutus/legaldeposit/websites/elecpubs/joint-collecting-framework-for-uk-legal-deposit.pdf [↑](#footnote-ref-14)
15. Digital Preservation Coalition, Non-Print Legal Deposit Digital Preservation Review: Final Report December 15th 2017. [↑](#footnote-ref-15)
16. Number of publishers was taken from the figures presented in Table 3, pg 13 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012). Not reproduced in this document. [↑](#footnote-ref-16)
17. Pg14 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012) [↑](#footnote-ref-17)
18. Para 65 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 [↑](#footnote-ref-18)
19. Pg 18 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012). [↑](#footnote-ref-19)
20. As reported in Q13 of the Publisher questionnaire, see Appendix A [↑](#footnote-ref-20)
21. https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation [↑](#footnote-ref-21)
22. http://blogs.bl.uk/webarchive/2015/09/ten-years-of-the-uk-web-archive-what-have-we-saved.html [↑](#footnote-ref-22)
23. Paragraph 87 of the Enactment stage impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (June 2012). [↑](#footnote-ref-23)
24. Based on calculations made in the LDLs regarding the average number of items per metre and the number of items collected under NPLD. [↑](#footnote-ref-24)
25. http://elegaldeposit.org [↑](#footnote-ref-25)
26. Internal British Library paper: Newspaper Growth Space Options and Projections. (2014) [↑](#footnote-ref-26)
27. Based on the cost of the original storage building and inflated based on GDP inflator this would be in the region of £26.7m [↑](#footnote-ref-27)
28. https://www.gov.uk/definition-of-disability-under-equality-act-2010 [↑](#footnote-ref-28)
29. https://www.legislation.gov.uk/ukpga/1988/48/contents [↑](#footnote-ref-29)