

Impact Assessment

Title: Digital Legal Deposit - Non-print Off Line Publications Lead department or agency: Department for Culture Media and Sport Other departments or agencies: Department for Business Innovation and Skills; The British Library.	Impact Assessment (IA)
	IA No: DCMS 004
	Date: 01/07/2010
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The purpose of legal deposit is to preserve publications of significance as part of the national archive. The aim is to maintain an archive of the nation's published output (and thereby its intellectual record and future published heritage) both in order to preserve the material for the use of future generations and, with certain important exceptions (set out later in this document), to make it available to readers in premises controlled by the Legal Deposit Libraries in accordance with the Legal Deposit Libraries Act 2003 (the 2003 Act).

The Legal Deposit Libraries Act 2003 (The 2003 Act)¹ reaffirmed existing provisions for the deposit of printed publications whereby a copy of each book or serial or other printed publication which is published in the UK is required to be deposited free of charge, in the British Library. In addition, five other libraries (the National Libraries of Scotland and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin) are each entitled to receive, on request, one free copy of any book or other printed publication published in the UK. These libraries together with the British Library are collectively known as the Legal Deposit Libraries.

The 2003 Act also created a framework of legislation in which Regulations could be made for the deposit of non-print publications.

¹ See: http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1

What are the policy objectives and the intended effects?

Our aim is to introduce affirmative secondary legislation to Parliament that will lead to regulations providing for publishers of relevant non-print publications to deposit one or more copies with the Legal Deposit Libraries. The objective is to preserve the material for future generations.

The Legal Deposit Advisory Panel (LDAP), an independent non-departmental public body, was set up in September 2005 to work at arm's length from the Government, to advise on the implementation of the 2003 Act and to make recommendations on regulatory options for the deposit of non-print publications.

At the beginning of March 2010, DCMS and BiS completed a public consultation, based on recommendations from LDAP, on the legal deposit of off line publications and on line publications which are available free of charge and without access restrictions. The consultation ran from December 2009 to March 2010 and we received 57 responses. At the end of March 2010, we received LDAP's proposals for commercial and protected on line publications.

For off line publications, we previously proposed a self-regulated voluntary scheme (which required the deposit library to make a request for a specific non-print publication). However, we have now included off line publications in the draft Regulations. We believe this will not place a significant additional burden on publishers and that it will benefit both publishers and the Legal Deposit Libraries by providing them with exemption from liability for e.g. breach of contract, copyright infringement and defamation for activities carried out in accordance with the Regulations.

These draft Regulations cover all types of non-print publications. Specific types of non-print publication are listed in the draft Regulations, but this list is not exhaustive as we do not wish to preclude new types of publications which may develop in the future. The blog is an example of a relatively new type of publication whose popularity and significance may not have been foreseen just a few years ago. As in the case of printed publications, sound and film recordings are not covered by the deposit obligations unless they are incidental features of the main body of a work and not its purpose.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

LDAP were set up in September 2005 to advise the Secretary of State on the implementation of the 2003 Act and to make recommendations. They have worked at arm's length from Government and have produced these recommendations. They considered four options:

1. Publisher based archiving
2. Unregulated voluntary code of practice, no active requesting by Deposit Libraries
3. Self-Regulated Voluntary Scheme, with active requesting by libraries (**currently operating**)
4. Statutory Regulation (**preferred option**).

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	A 7 year Sunset clause is in the draft Regulations and the policy will be reviewed then.
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Legal Deposit Libraries will put in place a management structure that will be able to provide information for future policy reviews.

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Date:

Summary: Analysis and Evidence - Policy Option 1 – Non-print off line publications

Description: Publisher Archiving

Price Base Year 2008	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £0m

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

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

There are no costs for Legal Deposit Libraries. Publishers that wish to maintain an archive will need to fund this but there will be no obligation for them to do so.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			Optional
High			Optional
Best Estimate			

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

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

Under this option the libraries would not seek to build a central archive, and the nation would rely entirely upon the private sector. Publishers would retain copies of their own publications specifically for archival purposes, with various access and cost arrangements, resulting in several archives behind multiple commercial barriers. Therefore there would be no public archive of this content.

Key assumptions/sensitivities/risks

Discount rate

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Impact on admin burden (AB) (£m):			Impact on policy cost savings		In scope
New AB:	AB savings:	Net:	Policy cost savings:		Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom and Ireland.		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			Not Applicable		
What is the annual change in enforcement cost (£m)?			Not Applicable		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	Non-traded:	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties² Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence - Policy Option 2 - Non-print off line publications

Description: Unregulated Voluntary Code of Practice, no active requesting by libraries

Price Base Year 2008	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£463k	High: -£835k	Best Estimate: -£686k

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£55,698	£463,212
High		£100,368	£834,710
Best Estimate		£82,500	£686,111

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

These costs are made up of:

- The average total cost per annum to the Legal Deposit Libraries. These include technology, staffing, access and preservation costs; and
- The average cost to publishers for producing and depositing content.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

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

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

This option encourages publishers to deposit publications with the Legal Deposit Libraries and they can choose whether to deposit and how to deposit. Under this option the Code would become permanent, encouraging publishers to deposit off line and microform publications

Key assumptions/sensitivities/risks	Discount rate	3.5
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This approach does not give the legal protection against defamation etc that would be afforded to the Legal Deposit Libraries and the publishers if Regulations were put in place.

There would be no governance or additional support from industry bodies apart from publicising the Code itself. This option would not afford the Legal Deposit Libraries and publishers protection against defamation and copyright infringement. In addition, the libraries would not actively identify or request publications. This could mean lots of important content is not deposited with the Deposit Libraries.

Impact on admin burden (AB) (£m):			Impact on policy cost savings	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom and Ireland		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			The British Library		
What is the annual change in enforcement cost (£m)?			NA		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:		Benefits:
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties³ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

³ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence - Policy Option 3 - Non-print off line publications

Description: Self-Regulated Voluntary Scheme, with active requesting by libraries

Price Base Year 2008	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£1.12m	High: -£1.94m	Best Estimate: -£1.61m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£134,473	£1.12m
High		£233,093	£1.94m
Best Estimate		£193,645	£1.61m

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

These costs are made up of:

- The average total cost per annum to the Legal Deposit Libraries. These include technology, staffing, access and preservation costs; and
- The average cost to publishers for producing and depositing content.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

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

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

This option would enhance the Voluntary Code in Option Two by establishing a formal, lasting agreement and governance structure via LDAP, to include Memoranda of Understanding signed by libraries and publishers, a monitoring and annual reporting scheme, and five-yearly reviews both of effectiveness of the scheme and of the trend in the number of relevant publications.

This scheme is currently in place so these are costs already being met by publishers and the Deposit Libraries. This is effectively the do nothing option.

Key assumptions/sensitivities/risks**Discount rate**

3.5

This approach does not give the legal protection against defamation etc that would be afforded to the Legal Deposit Libraries and the publishers if Regulations were put in place such as protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.

Legal Deposit Libraries need to gain the permission from publishers to allow access to the content and the conditions that go with that.

Impact on admin burden (AB) (£m):**Impact on policy cost savings****In scope**

New AB:

AB savings:

Net:

Policy cost savings:

Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom			
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?		The British Library			
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁴ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

⁴ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence - Policy Option 4 - Non-print off line publications

Description: Statutory Regulations

Price Base Year 2008	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£1.35m	High: -£2.34m	Best Estimate: -£1.94m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		£162,022	£1.35m
High		£281,642	£2.34m
Best Estimate		£233,794	£1.94m

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

These costs are made up of:

- The average total cost per annum to the Legal Deposit Libraries. These include technology, staffing, access and preservation costs; and
- The average cost to publishers for producing and depositing content.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

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

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

This would ensure we get as comprehensive an archive as possible, while not significantly increasing the burden on the Legal Deposit Libraries or publishers compared to option 3. It would also offer the Legal Deposit Libraries and publishers the protections afforded by the Legal Deposit Libraries Act 2003 such as protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.

Key assumptions/sensitivities/risks	Discount rate	3.5
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Impact on admin burden (AB) (£m):			Impact on policy cost savings		In scope
New AB:	AB savings:	Net:	Policy cost savings:		Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom			
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?		The British Library /courts			
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties⁵ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

⁵ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Legal Deposit Libraries Act 2003 http://www.culture.gov.uk/what_we_do/libraries/3409.aspx
2	Consultation December 2009 - http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/reference_library/consultations/6506.aspx
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost	£233k									
Total annual costs	£233k									
Transition benefits										
Annual recurring										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheet)

Background

The purpose of legal deposit is to ensure that the nation's published output (and thereby its intellectual record and future published heritage) is preserved as an archive for research purposes and the use of future generations.

The Legal Deposit Libraries Act 2003 (The 2003 Act)⁶ reaffirmed existing provisions for the deposit of printed publications whereby a copy of each book or serial or other printed publication which is published in the UK is required to be deposited free of charge, in the British Library. In addition, five other libraries (the National Libraries of Scotland and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin) are each entitled to receive, on request, one free copy of any book or other printed publication published in the UK. These libraries, together with the British Library, are collectively known as the Legal Deposit Libraries.

The 2003 Act also created a framework in which Regulations could be made to extend the system of legal deposit to cover various non-print media as they develop, including off line publications (e.g. CD ROMS and microforms) and on line publications (e.g. e-journals). This will ensure that publications of significance are deposited, regardless of the medium in which they are published, and are preserved as part of the national archive of UK publications, so as to remain available to future generations of eligible users.

The Legal Deposit Advisory Panel (LDAP), an independent non-departmental public body, was set up in September 2005 to work at arm's length from the Government, to advise on the implementation of the 2003 Act and to make recommendations on regulatory options for the deposit of non-print publications.

At the beginning of March 2010, DCMS and BiS completed a public consultation, based on recommendations from LDAP, on the legal deposit of off line publications and on line publications which are available free of charge and without access restrictions. The consultation ran from December 2009 to March 2010 and we received 57 responses. At the end of March 2010, we received LDAP's proposals for commercial and protected on line publications.

For off line publications, we previously proposed a self-regulated voluntary scheme (which required the deposit library to make a request for a specific non-print publication). However, we have now included off line publications in the draft Regulations. We believe this will not place a significant additional burden on publishers and that it will benefit both publishers and the Legal Deposit Libraries by providing them with exemption from liability for e.g. breach of contract, copyright infringement and defamation for activities carried out in accordance with the Regulations.

Recommendation

We recommend Statutory Regulation for the Deposit of non-print off line content.

The Legal Deposit Advisory Panel recommended the Self-Regulated Voluntary Scheme, for off line publications, with active requesting by Legal Deposit Libraries. This recommendation was made to the Secretary of State when Regulations for different types of non-print works were going to be implemented incrementally. The argument being that to make Regulations for the legal deposit of off line publications in isolation would be a burden on the public purse considering the number of off line publications being published today.

As the proposed Regulations are no longer being introduced incrementally we consider there is no significant additional cost to introducing Regulations for off line publications. This will ensure the Legal Deposit Libraries and publishers are afforded the legal protection that the Legal Deposit Libraries Act

⁶ See: http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1

2003 offers protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel. It will also ensure a more complete archive is created and preserved and will enable the deposited publications to be made available to readers for research purposes albeit on a carefully controlled basis.

Options

Publisher Archiving (Option One)

Under this option the Legal Deposit Libraries would not seek to build a central archive, and the nation would rely entirely upon the private sector. Publishers would retain copies of their own publications specifically for archival purposes, with various access and cost arrangements, resulting in several archives behind multiple commercial barriers. There would be no legal basis on which researchers could obtain access to the publications.

Unregulated Voluntary Code of Practice, no active requesting by libraries (Option Two)

In 2000, representatives from the Legal Deposit Libraries and the publishing Trade Associations drew up a Code of Practice for the Voluntary Deposit of Microform and off line publications. This encouraged publishers to deposit with libraries; however, they could choose whether and how to deposit. Under this option the Code would become permanent, encouraging publishers to deposit off line and microform publications. However, there would be no governance or additional support from industry bodies apart from publicising the Code itself. In addition, the libraries would not actively identify or request publications. There would be no legal basis on which researchers could obtain access to the publications. Also, this approach does not give the legal protection that would be afforded to the Legal Deposit Libraries and publishers if Regulations are put in place against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.

Self-Regulated Voluntary Scheme, with active requesting by libraries (Option Three)

This option would enhance the Voluntary Code of Practice for Voluntary Deposit of Microform off line publications in Option Two by establishing a formal, lasting agreement and governance structure. This would include Memoranda of Understanding signed by the Legal Deposit Libraries and publishers, a monitoring and annual reporting scheme, and five-yearly reviews both of the effectiveness of the scheme and of the trend in the number of relevant publications. Publishers would be actively encouraged to deposit by their Trade Association representatives; the Legal Deposit Libraries would actively identify relevant publications and request deposit when necessary. There would be no legal basis on which researchers could obtain access to the publications. Also, this approach does not give the legal protection that would be afforded to the Legal Deposit Libraries and publishers if Regulations are put in place against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.

No extra cost to business would be incurred as this option is currently in place so is effectively the do nothing option.

Statutory Regulation (Option Four)

Government regulation, under the Legal Deposit Libraries Act 2003, would oblige publishers to deposit, free of charge, one copy of their off line publications with the British Library and, upon request, up to five additional copies for the remaining Legal Deposit Libraries, on the same basis as the legal deposit of printed publications under the Legal Deposit Libraries Act 2003.

For each option, the benefits to stakeholders - including publishers, libraries, and members of the public - have been assessed against the overall administrative costs (and, to a certain extent, impact on publishers' revenue). In addition, other impacts, such as potential risks, were considered. Taken together, these form the evidence base for determining the most appropriate option for deposit.

Benefits to Stakeholders

The Legal Deposit Libraries Act 2003 recognises the benefit of collecting and preserving a comprehensive collection of UK electronic publications, including off line and microform publications. A

permanent comprehensive collection, centrally located and freely available to such public stakeholders as researchers, educators, and students, is of benefit to UK research and scholarship.

For Option One, we are not aware of publishers routinely maintaining an archive of either print or off line publications; this is unlikely to change in future. Moreover, maintaining such an archive would involve publishers taking on some of the lifecycle costs of a permanent archive; there might also be access costs for public stakeholders.

The Legal Deposit Libraries have no mechanism for requesting off line publications that are not deposited. In this instance, Option Two is likely to fall far short of providing a comprehensive collection of off line publications. It is estimated that around 6,000 off line publications have already been lost.

Only Options Three and Four can ensure levels of deposit comparable with those currently achieved for print publications, guaranteeing a comprehensive collection.

Importantly Option 4 is the only option that gives a legal basis on which researchers could obtain access to the publications. And offers legal protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.

Benefits to research and scholarship

A general benefit of extending legal deposit to non-print includes the availability and continued maintenance of a national and accessible archive of UK published materials for humanistic, social, economic and scientific research, for use by the academic community, by business and industry, by the professions, by government and by private individuals. Users benefit from a geographically distributed national published archive of national and international importance on multiple sites, saving time, costs of travel and subsistence.

Benefits to the UK

Extension of legal deposit will allow for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This in turn will benefit communities in the UK of key importance for its future well-being and prosperity: researchers and educators; wealth creators in current and emerging sectors of business and industry; and the scientific community. The nation also benefits from the international renown of the BL and the LDLs and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them.

Financial Implications of Deposit

Publishers and Libraries

The benefit of a comprehensive collection of off line publications for the Legal Deposit Libraries must be balanced against the administrative and other costs for the major stakeholders, i.e. libraries and especially publishers. If the cost per transaction is combined with the actual rate of deposit for the voluntary code and print deposit, the potential overall administrative costs for each of the deposit options⁷ can be calculated as follows:

Table 1: Financial Implications by Option

Deposit Option	Estimated no. of publications	Publishers	Libraries
Voluntary Code (Option	5,711	£8,934-£53,604	£46,764

⁷ Administrative costs for publishers, for Options Two-Four, are calculated for the range of costs per transaction, i.e. £2-£12. Publisher costs for Option One would be similar to some of the lifecycle costs assumed by libraries in Options Two-Four. However, costs are not quoted here for this Option, as it is difficult to estimate the number of publications publishers would choose to archive, what manner of preservation they would undertake, and what access arrangements would be negotiated with libraries. Estimated number of publications is based on maximum total number of copies deposited per annum (i.e. up to six copies, one for each legal deposit library, per publication) and includes both monographs and serials parts.

Two)			
Self-Regulated Voluntary Scheme (Option Three)	9,862	£19,724-£118,344	£114, 749
Statutory Regulation (Option Four)	11, 962	£23, 924-£143,544	£138,098

Publisher costs for Options Two, Three and Four assume that deposits are made as part of the normal distribution process upon publication.

With Option One, while administrative costs are relatively low, publishers that maintain an archive must assume some lifecycle costs for preserving, cataloguing and providing access. As there would be no obligation to deposit off line publications, the Legal Deposit Libraries would need to purchase publications at a cost to the public purse (although benefiting publishers' revenue).

Even with an unregulated voluntary code (Option Two), as table 1 illustrates, administrative costs for publishers begin to rise, in addition to some loss of sales revenue. Publishers have expressed concern about the possible impact on their revenues of deposit of (and immediate access to) time-sensitive or high value/low volume publications. A voluntary code can make provision for special arrangements in such cases, as does the 2000 Voluntary Code. Similarly, Legal Deposit Library administrative costs rise, and the relatively low rate of deposit means that they will still need to purchase non-deposited off line publications if required.

Options Three and Four incur the highest costs of all the options, for both publishers and the Legal Deposit Libraries. With Option Three, there is a considerable rise in administrative costs because more publications are deposited. Where there is potential impact on revenue streams the direct and continual input from publishers through participation in the governance structure makes Option Three a more responsive approach to the financial concerns. However, because deposit rates would not be as high as with Option Four, Legal Deposit Libraries would still need to purchase non-deposited off line publications. Also, Option Three's governance structure would probably require an additional overhead cost, for both Legal Deposit Libraries and publisher representatives.

As a statutory duty Option Four costs would be the highest of all options for both Legal Deposit Libraries and publishers. However, a comprehensive collection of off line publications would exist in the Legal Deposit Libraries ensuring that publishers would not need to keep a private collection.

Costs and Impacts on Other Stakeholders

With Options One and Two, cost burdens spread to include other stakeholder groups, namely business and academic researchers; students; educators; and other members of the public. Both options impose a direct cost to the public, not just because they fall short of ensuring a comprehensive collection of off line publications, but also in the case of Option One because archives are spread over a range of publishers with diverse access arrangements. These factors could cost public stakeholders in terms of time, travel, and subsistence.

Options Three and Four create savings for researchers in that the publications will be collected in a comprehensive way, at designated sites. In the case of Option Four they would be made publicly and freely available within the terms of the proposed Regulations.

To ensure that the impact on publishers' business models is kept to a minimum, the draft Regulations include some general provisions about embargoes. These are intended to protect the commercial interests of those publishers who may be unreasonably prejudiced if readers are allowed access to their works in a Legal Deposit Library, albeit on the limited basis prescribed under the draft Regulations.

Although the possibility of an embargo does not remove the obligation to deposit the publication with a Legal Deposit Library, an embargo means that readers will not be able to access the publication for a specified period of time.

Risks

Most of the risks are associated (a) with the lack of a comprehensive collection of off line publications and (b) with the financial implications for each option. However, there is an additional major risk for any voluntary option: the lack of statutory protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel. The proposed Regulations would ensure these risks are covered.

Defamation Risk — A person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. For example the complainant might have obtained a decision (whether via the court or by a separate settlement with the publisher) for all copies to be withdrawn or for an apology or retraction to be published, but the archived copy remains as first published. And under case law (*Loutchansky v Times Newspapers Ltd and Others No 2*) it may be argued that creating a temporary screen copy of a digital work, which happens each time that a person accesses a digital work, constitutes a form of re-publishing and therefore the deposit library might arguably be creating a new defamation. The deposit libraries will put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. However such procedures would typically depend upon the deposit libraries being made aware of the defamation by the original publisher, who might also therefore bear some responsibility if there is any failure in communications.

Conclusion

As Regulations for non-print works are no longer being introduced incrementally the drafting of the Regulations for off line publications will not add any significant cost to the drafting of the Regulations as a whole. The inclusion of off line publications in the Regulations will ensure that the Legal Deposit Libraries and publishers are afforded the legal protection under the Legal Deposit Libraries Act 2003 which offers protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liabilities, such as defamation and libel.

By including off line publications in the Regulations we will not be significantly increasing the costs to business above those which already occur (Option 3 is currently in place) and a more comprehensive archive of non-print works will be collected. It is expected that those publishers who publish in both print and off line formats the same publication will be able to make savings by depositing off line versions only.

<p>Title: Regulation for the legal deposit of UK on line publications</p> <p>Lead department or agency: Department for Culture Media and Sport</p> <p>Other departments or agencies: Department for Business, Innovation & Skills</p>	Impact Assessment (IA)
	IA No: DCMS 006
	Date: 29/07/2010
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
<p>Contact for enquiries: Darren Grubb, DCMS</p>	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The purpose of legal deposit is to preserve publications of significance as part of the national archive. The aim is to maintain an archive of the nation's published output (and thereby its intellectual record and future published heritage) both in order to preserve the material for the use of future generations and, with certain important exceptions (set out later in this document), to make it available to readers in premises controlled by the Legal Deposit Libraries in accordance with the Legal Deposit Libraries Act 2003 (the 2003 Act).

The Legal Deposit Libraries Act 2003 (The 2003 Act)⁸ reaffirmed existing provisions for the deposit of printed publications whereby a copy of each book or serial or other printed publication which is published in the UK is required to be deposited free of charge, in the British Library. In addition, five other libraries (the National Libraries of Scotland⁹ and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin) are each entitled to receive, on request, one free copy of any book or other printed publication published in the UK. These libraries together with the British Library are collectively known as the Legal Deposit Libraries.

The 2003 Act also created a framework of legislation in which Regulations could be made for the deposit of non-print publications.

What are the policy objectives and the intended effects?

- To ensure a national archive of on line publications;
- To enable an efficient system in which material is archived and preserved in the deposit libraries;
- To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders;
- To facilitate long-term preservation, so that the material may continue to be used in future; and
- To ensure long term viability by requiring both Legal Deposit Libraries and publishers to share part of the responsibility for archiving without imposing an unreasonable burden on any institution.

⁸ See: http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1

⁹ The Faculty of Advocates in Scotland acts as the deposit library for legal publications in Scotland

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

1. Do nothing, i.e. leave archiving responsibility to the market.
2. Voluntary deposit schemes, for permissions-based harvesting by deposit libraries and publisher delivery of other works.
3. Statutory regulation, allowing libraries to harvest works directly from the internet.
4. Statutory regulation for both library harvesting and, upon notification, publisher delivery of other works

Following Recommendations from the Legal Deposit Advisory Panel Option 4 is preferred, as the most cost-efficient method. It is also the only means of ensuring that all types of digitally published works can be systematically collected, whilst also allowing each library and publisher flexibility to choose an appropriate delivery method for their individual circumstances, thus avoiding any unreasonable burden.

<p>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</p>	<p>A 7 year Sunset clause is in the draft Regulations and the policy will be reviewed then.</p>
<p>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</p>	<p>Legal Deposit Libraries will put in place a management structure that will be able to provide information for future policy reviews.</p>

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:..... Date:

Summary: Analysis and Evidence

Policy Option 1 – UK on line publications

Description: Do nothing, i.e. leave archiving responsibility to the market

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

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

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

There are no costs to the Libraries as it is purely up to the publishers to archive their material. Publishers that do create their own archives will incur costs but there would be no obligation to do so and therefore no way of calculating those costs.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

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

Whilst some professional publishers do archive their own material, all the available evidence suggests that the vast majority of individual publishers of freely available on line publications within the UK domain do not. Therefore a substantial proportion of the UK's cultural and intellectual output will be lost forever.

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

Key assumptions/sensitivities/risks	Discount rate	3.5
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Impact on admin burden (AB) (£m):			Impact on policy cost savings		In scope
New AB:	AB savings:	Net:	Policy cost savings:		Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom and Ireland		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			NA		
What is the annual change in enforcement cost (£m)?			NA		
Does enforcement comply with Hampton principles?			NA		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro NA	< 20 NA	Small NA	Medium NA	Large NA
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹⁰ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹⁰ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2 - – UK on line publications

Description:

Voluntary schemes, for permissions-based harvesting by libraries and publisher delivery of other works

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£27.2m	High: -£44.9m	Best Estimate: -£36.0m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	£4.8m	10	£2.8m	£27.2m
High	£8.5m		£4.6m	£44.9m
Best Estimate	£6.6m		£3.7m	£36.0m

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

Libraries' costs for permissions-based harvesting total £0.7m - £1.0m per annum. Libraries' costs for voluntary deposit schemes total £0.6m - £0.9m rising to £1.0m - £1.3m. Set up costs total £2.2m - £3.1m over three years and ongoing costs of improving systems and preservation range from £0.4m - £1.1m pa. Publishers' costs are £0.4m - £1.0m rising to £0.9m - £2.4m for the administrative cost of deposit (£3 - £6.5 per deposit). Publishers' setup costs range from £0.2m to £1.4m in different years.

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

Publishers depositing works will be potentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made in them. To minimise this loss access to archived copies can be limited to the physical premises of the Libraries, limited to a certain number of people at any one time, or even embargoed for a period of time. If such access restrictions are deemed insufficient then the publisher can choose not to participate in the voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	NA	10	NA	NA
High	NA		NA	NA
Best Estimate	NA		NA	NA

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

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

There will be some preservation of the nation's on line published heritage but not in a systematic manner and the vast majority will not be captured. By year 10, only about 0.1% of freely accessible websites and publications, plus 40%-55% of other publications could be archived. See Table 12 for a full comparison of web archive size, e-books/e-newspapers/e-periodicals archived, and other benefits for each option.

Key assumptions/sensitivities/risks**Discount rate**

3.5

Without statutory protection publishers depositing, or website owners giving permission for a deposit library to harvest, may risk a claim for infringement of copyright for one or more reasons. The deposit libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works. In addition, a person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation.

Impact on admin burden (AB) (£m):

New AB:

AB savings:

Net:

Impact on policy cost savings

Policy cost savings:

In scope

Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom and Ireland			
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?		UK Legal Deposit Libraries			
What is the annual change in enforcement cost (£m)?		Not known			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: NA		Non-traded: NA	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: NA		Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 3 – UK on line publications

Description:

Statutory regulation allowing libraries to harvest works directly from the internet for free content only and voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions.

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£30.3m	High: -£48.6m	Best Estimate: -£39.5m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£4.8m	10	£3.2m	£30.3m
High	£8.5m		£5.0m	£48.6m
Best Estimate	£6.6m		£4.1m	£39.5m

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

Libraries' costs for harvesting total £0.9m - £1.3m pa rising to £1.4m - £1.9m. Libraries' costs for voluntary deposit schemes total £0.6m - £0.9m rising to £1.0m - £1.3m. Set up costs total £2.2m - £3.1m over three years and ongoing costs of improving systems and preservation range from £0.4m - £1.1m pa. Publishers' costs are £0.2m - £0.5m rising to £0.6m - £2.0m for the administrative cost of deposit (£3 - £6.5 per deposit). Publishers' setup costs range from £0.2m to £1.4m in different years.

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

Publishers depositing works will be potentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made in them. To minimise this loss access to all archived copies would be limited to the physical premises of the Libraries and to a certain number of people at any one time. Voluntary deposits could be embargoed for a period of time. If such access restrictions are deemed insufficient then the publisher can choose not to participate.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA		NA	£16.4m
High	NA		NA	£22.8m
Best Estimate	NA		NA	£19.6m

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

The new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of deposits and therefore will make savings and so accrue benefits from this option. The method for calculating these savings is explained under option 4 in the following section. However we recognise that monetising these benefits is not easy and while we have provided a broad estimate of the savings above we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies.

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

Libraries will be able to harvest systematically, producing a single archive of the nation's on line published heritage for the benefit of researchers and future generations. By year 10 up to 100% of freely accessible websites and publications in scope, plus 40%-55% of other publications could be archived. See Table 12 for a full comparison of web archive size, e-books/e-newspapers/e-periodicals archived, and other benefits for each option.

Key assumptions/sensitivities/risks**Discount rate**

3.5

Without statutory protection publishers depositing, or website owners giving permission for a deposit library to harvest, may risk a claim for infringement of copyright for one or more reasons. The deposit libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works. In addition, a person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. Material harvested under regulation will be protected against this, but it remains for material deposited under voluntary schemes.

Impact on admin burden (AB) (£m):**Impact on policy cost savings****In scope**

New AB:

AB savings:

Net:

Policy cost savings:

Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			UK Legal Deposit Libraries and the courts		
What is the annual change in enforcement cost (£m)?			Not known		
Does enforcement comply with Hampton principles? Not sure?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department. Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹² Statutory Equality Duties Impact Test guidance Mandatory?	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 4 – UK on line publications

Description: Statutory regulation for both library harvesting and, upon request, publisher delivery of other works

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£20.3m	High: -£41.0m	Best Estimate: -£30.6m

	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£7.4m	10	£3.7m	£36.7m
High	£13.9m		£6.4m	£63.8m
Best Estimate	£10.6m		£5.0m	£50.2m

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

Libraries' costs for harvesting total £0.9m - £1.3m pa rising to £1.4m - £1.9m. Libraries' costs for notification-based deposit total £0.8m - £1.2m rising to £1.0m - £1.5m. Set up costs total £2.2m - £3.1m over three years and ongoing costs of improving systems and preservation range from £0.4m - £1.1m pa. Publishers' costs are £0.3m - £1.0m rising to £1.3m - £3.9m for the administrative cost of deposit (£3 - £6.5 per deposit). Publishers' setup costs range from £0.3m to £2.9m in different years.

Costs to publishers of £10.5m (low) to £27.4m (high) with a best estimate (mid-point) of £18.9m (in NPV terms over 10 years).

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

Publishers depositing works will be potentially giving up part of their prerogative under copyright to exploit works and benefit from the investment they have made in them. To minimise this loss access to all archived copies would be limited to the physical premises of the Libraries and to a certain number of people at any one time. For particular high value / low volume publications embargoes could be agreed for a period of time.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA		NA	£16.4m
High	NA		NA	£22.8m
Best Estimate	NA		NA	£19.6m

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

Description and scale of key monetised benefits by 'main affected groups' The new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of deposits and therefore will make savings and so accrue benefits from this option. The method for calculating these savings is explained under option 4 in the following section. However we recognise that monetising these benefits is not easy and while we have provided a broad estimate of the savings above we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies.

A total 10-year savings (benefits) of £16.4m (low) to £22.8m (high) and a best estimate (mid-point) of £19.6m (in NPV terms over 10 years), pages 111-112.

This gives a net benefit to business in NPV terms over 10 years of £0.7m making this cost neutral.¹³ Pages 68-69.

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

Libraries will be able to harvest systematically, producing a single archive of the nation's on line published heritage for the benefit of researchers and future generations. Up to 100% of freely accessible websites and publications, plus 100% of other publications could be archived. See table 12 for a full comparison of web archive size, e-books/e-newspapers/e-periodicals archived, and other benefits for each option.

Key assumptions/sensitivities/risks

Discount rate

3.5

Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through section 8, copyright and database rights are not infringed by the deposit libraries harvesting copies from the internet, and through section 9 the publisher is also protected against infringement of copyright, publication right or database rights, and against any claim for breach of contract, in respect of deposited copies. In addition, the operation of section 10 of the 2003 Act dramatically reduces the risk of liability for any defamation claims in respect of the archived copies.

Impact on admin burden (AB) (£m):			Impact on policy cost savings	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

¹³ In 2005 an estimate was made of the admin burden placed on publishers of hard-copy legal deposit which was in the region of £53m. However we recognise that this was not an accurate figure. This figure, produced by PWC, was part of a wider exercise to give an indication of the costs that Government places on businesses, not to produce statistically accurate data for each regulation. The Standard Cost Model was used, which works on a relatively simple methodology, by measuring the cost (in terms of the time it takes to complete and any external costs) of completing one transaction and then multiplying it by the number of times it happens. These costs were established through interviews with publishers. It is not clear if these figures include the cost of the publications themselves. Therefore, these are not accurate costs, but rather are indicative of the burden placed on business by the regulation.

However we do know that the regulations will lessen the admin burden and therefore have attempted a benefit calculation to monetise these savings and produce indicative benefits.

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom and Ireland		
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?			UK Legal Deposit Libraries and Courts		
What is the annual change in enforcement cost (£m)?			Not known		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: NA	Non-traded: NA	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: NA	Benefits: NA	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹⁴ Statutory Equality Duties Impact Test guidance	No	
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	Yes	70
Environmental impacts Greenhouse gas assessment Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹⁴ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No	Legislation or publication
.	
5	Legal Deposit Libraries Act 2003 (http://www.opsi.gov.uk/acts/acts2003/ukpga_20030028_en_1)
6	Regulatory Impact Assessment for Legal Deposit Libraries Bill, 2003 (http://www.culture.gov.uk/images/publications/RIALegalDepositLibrariesFinalMArch2003.pdf)
7	Consultation: Proposal on the Collection and Preservation of UK Off line and Microform Publications and UK On Line Publications (Available free of charge and without access restrictions) (http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/reference_library/consultations/6506.aspx)

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	3.0	1.4	1.4	0.5	0.5	0.5	0.5	0.5	1.1	1.1
Annual recurring cost	3.3	3.7	4.1	4.8	5.2	5.4	5.6	5.7	6.1	6.5
Total annual costs	6.3	5.1	5.5	5.3	5.7	5.9	6.1	6.2	7.1	7.6
Transition benefits										
Annual recurring										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Issue under consideration

The disappearance of heritage in whatever form constitutes a loss of value, and nations aim to maintain, increase and diffuse knowledge by assuring the conservation and protection of their documentary inheritance of books, papers, works of art and monuments of history and science. For printed (non-digital) publications this issue is normally addressed by national libraries and archives, sometimes together with selected research libraries, systematically building and preserving a comprehensive collection of their nation's published output. Typically this activity is supported by a legal framework which requires publishers, at their own cost, to deposit a copy of each work with the specified library or libraries—known as “legal deposit”. This helps to ensure there is a single archive, overcoming potential coordination issues within a large and diverse sector.

A statutory legal deposit system has existed in the UK for more than 300 years for printed works. However resources of information and creative expression are increasingly being produced, distributed, accessed and maintained in digital form. Without appropriate legal, technical and institutional frameworks to secure the protection of this digital heritage, it is at risk of being lost forever.

This risk is recognised by the research community and by many publishers, especially those producing publications of scholarly or historical interest. It is also common to most nations and governments; for example on 15 October 2003 the UNESCO member states adopted a Charter on the Preservation of the Digital Heritage and there are, or have been, initiatives in many countries to extend the legal deposit system to include digital publications. This Impact Assessment considers options for addressing it in the UK, in relation to digital content which is published via the internet for download or viewing on line.

Rationale for intervention

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 “deposit libraries”:

- British Library (“BL”)
- Bodleian Library, Oxford (“Bodleian”)
- National Library of Scotland (“NLS”). Note: the Act also confers rights for access to legal works deposited with NLS upon the Library of the Faculty of Advocates (“FoA”)
- National Library of Wales (“NLW”)
- University Library, Cambridge (“CUL”)
- Library of Trinity College, Dublin (“TCD”)

The Legal Deposit Libraries Act 2003 extends existing legal deposit provisions for printed material to cover non-print works. The 2003 Act gives the Secretary of State for Culture Media and Sport the powers to make secondary legislation bringing new and emerging publishing media under its scope. Such regulations must be approved by the affirmative resolution of each House of Parliament and may not be made unless both the deposit libraries and publishers likely to be affected have been consulted and unless the Secretary of State is satisfied that the regulations do not unreasonably prejudice the interests of persons who publish works to which the regulations relate and there are not disproportionate costs to publishers. In 2005, the Department for Culture Media and Sport set up the Legal Deposit Advisory Panel as an independent advisory non-departmental public body, working at arms length from the Government to advise and make recommendations upon the content of such regulations or other options.

The Legal Deposit Advisory Panel submitted their recommendations to the Secretary of State for Culture Media and Sport and a public consultation exercise was undertaken at the beginning of 2009 on the Panel's recommendations.

Policy Objectives

- To ensure a national archive of on line publications;
- To enable an efficient system in which material is archived and preserved in the deposit libraries;
- To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders;
- To facilitate long-term preservation, so that the material may continue to be used in future; and
- To ensure long term viability by requiring both Legal Deposit Libraries and publishers to share part of the responsibility for archiving without imposing an unreasonable burden on any institution.

Option 1: Do nothing, i.e. leave archiving responsibility to the market

The first option is not to take any central, public sector initiative; the private sector and market forces would have to assume all responsibility for developing, maintaining, preserving and providing access to an archive of the UK's on line publications. The deposit libraries would continue to collect and archive printed publications for the nation, under existing legal deposit provisions, but would not actively seek to archive on line publications in any systematic way. Individual publishers might approach a deposit library to archive on line publications on its behalf, but this would be subject to separate negotiations and cost-benefit analysis for the specific circumstances.

However, whilst some professional (typically large) publishers archive their own material, enquiries by the Legal Deposit Advisory Panel show that the vast majority of UK publishers do not. Therefore a substantial proportion of the UK's cultural and intellectual heritage would be lost forever.

Furthermore, in general the relatively small number of publishers who archive their material do not usually permit access to the archived copies, except in the case of a system failure affecting their main public offering; or they might make them accessible on a commercial basis in exchange for subscription or payment. Therefore this option is not entirely without cost to legal deposit libraries, universities and other publicly-funded research institutions who subscribe for access by their users, although the overall impact is negligible because so few archives are made accessible in this way. Also, there is no overall systematic or co-ordinated approach; private sector archiving initiatives tend to be arranged individually, with different partner organisations and in different locations, potentially making it difficult for future researchers to know where to find the content. So the benefits to researchers are very limited. Overall this option does not meet any of the policy objectives—although it would not involve any cost, nor would it achieve any public benefits.

Shared Technical Infrastructure for Options 2, 3 and 4

The deposit libraries anticipate collecting, managing, preserving and providing access to this archived digital heritage via a secure shared technical infrastructure, instead of each deposit library developing and supporting separate infrastructures of their own.

This secure shared infrastructure is based upon extending the British Library's existing Digital Library System to include additional nodes for storage and access at National Library of Scotland and the National Library of Wales (already completed) and providing additional access for the Bodleian, Cambridge University Library and, subject to the Secretary of State's confirmation under section 13 of the Legal Deposit Libraries Act 2003, for Trinity College Dublin. Content deposited with or collected by any of the deposit libraries for archiving purposes will be stored securely in this shared infrastructure, with copies automatically replicated, to protect against the risk of data corruption or loss, across four self-checking nodes in London and Yorkshire (British Library) and Aberystwyth and Edinburgh—widespread locations mitigate the risk of external factors affecting the infrastructure. A separate off line backup is also made as a last resort in case of catastrophic failure of the whole infrastructure. Readers in each deposit library will then be able to access the content, subject to the terms of use specified in the draft regulations.

This represents a considerable cost saving in comparison with each library developing its own equivalent architecture separately. It also benefits publishers, in that they need only deposit once into this shared infrastructure instead of depositing separate copies with each deposit library. The actual delivery of

content and accompanying management processes will normally be handled via a single deposit library; this is likely to be the British Library but could be any deposit library depending upon specific circumstances, such as when a publisher might wish to submit content for archiving via technical delivery arrangements they might already have in place with another deposit library.

The core infrastructure for storage and preservation is already in place, with its four nodes in the British Library, National Library of Scotland and National Library of Wales. Work to extend links to the Bodleian and Cambridge University Library and to develop the appropriate security and access controls has already begun.

Table 1: Set-up costs and core infrastructure/preservation costs

Set-up costs for the technical storage architecture.	£Nil (sunk costs)
Set-up costs for new ingest capabilities, discovery and access links, and digital rights and security controls.	£2.2m-£3.1m (= £0.75m-£1.0m p.a. for 3 years)
Ongoing costs of maintaining and improving systems for legal deposit content, plus digital preservation activity.	£0.4m-£0.7m p.a. in the first 3 years, rising to 0.75m-£1.1m p.a. thereafter

Option 2: Voluntary deposit schemes, for permissions-based harvesting by deposit libraries and publisher delivery of other works.

The second option is to encourage central archiving initiatives by the deposit libraries, but on a voluntary basis with publishers.

It would not be feasible for the Government or deposit libraries simply to purchase a copy of every publication for archiving, partly because of the extra cost to the public purse but mainly because, for digital content, payment does not necessarily give the purchaser a right to download, use and keep a copy of the work for preservation—frequently it is in the form of a licence or subscription only allowing access to read, and for a fixed period.

For most websites and some on line publications, the deposit libraries can download copies directly from the internet for archiving purposes, but only after first obtaining copyright permission from each rights holder. The British Library's existing UK Web Archive, re-launched in February 2010 with material collected from 2005 onwards, has been developed on this basis (<http://www.webarchive.org.uk/ukwa/>). Periodic “snapshots” are taken of selected websites, incorporated into the archive and made available on line to researchers, after the website owner has confirmed in writing that the Library may do so. However a limitation of this approach is that the website or on line publications must be freely available, i.e. published without access restrictions, before they can be captured by a deposit library's harvesting system.

Therefore, for all other on line publications where permissions-based harvesting is impractical, the deposit libraries would also need to work with the publishing trade associations to agree and set up voluntary deposit schemes, encouraging individual publishers to deposit or permit the deposit libraries to download copies of their publications. For example a voluntary deposit code for off line publications (on CD, DVD or other hand held media) and microform publications has already been in operation for several years, and a voluntary deposit scheme for scholarly e-journals was set up in 2007. The terms of both schemes may be reviewed via the BL's website:

<http://www.bl.uk/aboutus/stratpolprog/legaldep/index.html>.

Option 2 therefore comprises two elements: permissions-based harvesting by the deposit libraries where practical for certain types of material, combined with voluntary schemes in which publishers deposit or provide access for the deposit libraries to download copies of other works.

Option 2: Costs and benefits

a) Deposit library web harvesting (permissions-based)

Benefits, and the costs to deposit libraries, of adding to, maintaining and preserving the web archive on a permissions basis, have been analysed by reference to actual experience at the British Library, National Library of Scotland and National Library of Wales over the last five years in developing the UK Web

Archive. The UK Web Archive is now provided by the British Library in partnership with the National Library of Wales, Joint Information Systems Committee, and the Wellcome Library; between 2004 and 2008, as a UK Web Archiving Consortium, the group also included National Library of Scotland and the National Archives.

According to Nominet, the registrar for all .uk domains, except .gov.uk and .ac.uk, over 8.5 million domains were registered in May 2010. After adjustments to subtract non-active or other out-of-scope websites and to add readily identifiable UK websites in .com and other domains, the Legal Deposit Advisory Panel estimates that approximately 5.4 million websites were potentially in scope for harvesting as at June 2010, rising to perhaps 14.2 million by 2020. The need to obtain prior copyright permission from each rights holder means that, in this option, a domain-wide snapshot of all 5.4 million websites is a practical impossibility. Instead, the process first requires a deposit library to pre-select individual websites, identify and contact the website owner, then discuss or negotiate the terms on which their content might be archived.

However it is often difficult or impossible to identify the appropriate person, as organisations frequently provide only general (non-specific) contact details on their websites or to the domain registrar. Furthermore, the deposit library's request for permission often goes unanswered, for a variety of reasons. Since January 2005, the British Library has pre-selected 15,018 websites (as at 30 April 2010), but was only able to submit requests to 14,035 and, of these, successfully obtained written permission in just 3,411 cases, or 23% of those initially pre-selected. The National Library of Scotland and National Library of Wales have focused on fewer websites (each below 20% of the number targeted by the British Library) that are of particular Scottish or Welsh cultural interest; their success rate has therefore been marginally higher, but their experiences have been similar. Overall, the deposit libraries estimate that, in this option, they would only be able to obtain permission successfully for between 700 and 1200 new websites each year within current staffing levels.

Once permission in writing has been obtained, the relevant deposit library may use harvesting software to collect snapshots or "instances" of the website automatically. The frequency of such snapshots will vary for each website, depending upon its research value and the extent and frequency with which the contents change; but a typical frequency is once every six months for those already participating in the UK Web Archive. As deposit libraries gain experience, and software improvements are made, the average frequency might increase but, in this Impact Assessment, an average of two to four snapshots per annum is assumed.

The harvesting software collects and generates basic metadata as part of the automated process, although quality assurance and other manual interventions are also needed to ensure that the content gathered is complete and coherent as a snapshot, and to add further descriptive information for users of the archive. Once this work is completed, the snapshot is uploaded to the archive, stored in the secure repository of the shared infrastructure which is purpose-designed to minimise the risk of any content being corrupted or lost, and made available for use.

Overall, the deposit libraries' costs for supporting this activity are estimated in the following table:

Table 2: Cost of deposit library permissions-based harvesting under Option 2

Costs of selecting and obtaining permission for approximately 700 to 1200 new websites each year.	£0.3m-£0.4 per annum
Costs of harvesting and quality-assuring permitted websites four times per annum, with metadata and discovery tools.	£0.3m to £0.4m per annum
Annual costs of storage with technical support for archived websites (estimated 8 terabytes in Year 1, rising to an accumulated 60 terabytes by Year 10)	£0.1m-£0.2m per annum
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.7m- £1.0m per annum

This equates to roughly £13,000 per annum for each terabyte of data archived over a ten-year period. The benefits of this activity will be received mainly by researchers and future generations, being able to use the archive as a resource, and by the nation through safeguarding a part of its digital heritage. In addition to the existing UK Web Archive (26,460 instances of 7,142 websites, totalling 6.4 terabytes),

over a ten-year period a further 7,000 to 12,000 websites, in snapshots or instances totalling 50 to 80 terabytes, could perhaps be archived.

In addition, website owners normally give permission for archived instances of their website to be made freely available on the web. Therefore the archive would be accessible to any web user worldwide and researchers could use it from their homes, offices or other places of work, at any time of day, without having to travel to one of the deposit libraries.

However the need to obtain prior copyright permission is a severe constraint on benefits; these numbers represent only about 0.1% of UK websites, a tiny proportion of the whole, and 99.9% could remain at risk of being lost forever. Because of the way that websites are formed, with links to other websites and resources, this might also mean that many of those harvested will appear incomplete because of broken links.

Furthermore it is inevitable that some material, despite being specially selected for its importance and research value, will not be archived because rights holders are unwilling or unable to give permission.

b) Voluntary scheme for on line publications for which there are a charge or which are subject to public access restrictions

For many works, it is not technically possible for deposit libraries to download copies directly from the internet without the publisher providing the means to bypass a pay wall or access barrier. In some such cases both publisher and deposit library would prefer the publisher to deliver works to the library in discrete information packages rather than allow the deposit library to bypass normal website security and download the content directly, although both must also be available as an option.

Also, whereas part of the usefulness of a web archive is its breadth, gained by periodic snapshots of multiple websites at once, other publications such as e-books, digital newspapers, e-journals and other electronic periodicals are typically discrete works and may be more usefully processed as separate, individual items for discovery and study in the deposit libraries' archives. This involves a corresponding need to obtain or create better descriptive metadata and the processes involved in depositing, acquiring, processing, preserving and making such a work available for discovery and use by researchers, are all very different from the processes which support an archive of harvested websites.

Therefore permissions-based harvesting alone would not be sufficient as a solution and voluntary schemes would also need to be set up in which publisher's deposit, or provide access for libraries to download, copies of other works. Costs and benefits for such voluntary schemes have been estimated by reference to the most recent twelve months of a pilot voluntary deposit scheme for scholarly e-journals at the British Library, plus other voluntary deposits or donations and general experience of handling digital content under licensed arrangements with specific publishers.

The technical structure and format of works can also vary enormously between different publishers and different types of content. For instance e-journals deposited under the current voluntary scheme have varied from a simple PDF representation of the printed journal issue, to a secure and complex package of files containing separate articles and metadata in XML with discrete images, subordinate files and supplementary content plus manifests and checksums. In reality, despite several initiatives to promote preferred formats and methods, or de facto convergences until improved technologies or standards emerge, there is no real standardisation of practices amongst publishers. Therefore, at a granular level, each publisher's content and method of delivering it can be unique. However, at a high level, the Legal Deposit Advisory Panel has advised that deposit libraries will need to support six main deposit methodologies for such schemes, in addition to the seventh covering library harvesting for the web archive. These are illustrated in the following table.

Table 3: Major deposit and ingest methodologies

Description	Delivery	Content	Metadata	Cost Impact for Deposit Libraries
1. deposit of complex publications (full text XML and/or	FTP	Full text XML, and/or publications comprising multiple files in complex	Typically XML (or SGML), either full text or headers	Initial overhead to design ingest process with normalisation for

complex file structures with metadata)		structures		each publisher, but automated thereafter. More onerous if publisher often changes or updates the DTD / schema
2. deposit of simple publications <u>without</u> descriptive metadata.	FTP or Direct Delivery	Simple binary files: typically PDF but also Word, Excel, Photo image collections etc plus MHTML files.	n/a	May be a significant operational overhead to obtain or create metadata and associate it with the content. Serial publications may need to be handled differently from monograph publications, with a different cost profile.
3. deposit of simple publications <u>with</u> descriptive metadata.	FTP or Direct Delivery	Simple binary files: typically PDF but also Word, Excel, Photo image collections etc plus MHTML files. May also be appropriate for depositing new web-based pages via a bespoke RSS feed	Typically XML headers in a separate file, but may be TXT or another file type, or the metadata may be packaged in with the content (HTML, EPUB files or other options).	Relatively easy to ingest. Perhaps initial overhead to handle (and normalise elements of) different publishers' metadata.
4. harvest / download of discrete but complex web-based publications	Direct Harvest	Simple binary files, typically PDF, but combined with HTML web pages and linked to other publications, often published via a CMS	Likely to be contained within the HTML and derivable from surrounding web pages	Operational overhead, with limited scope for automation, in finding documents for download, in maintaining password lists..
5. harvest/download of discrete and simple publications as files (typically PDF)	Direct Harvest	Simple binary files, typically PDF	May be derivable from linked / surrounding web pages	Operational overhead, with limited scope for automation, in finding documents for download, in maintaining password lists and in creating/finding metadata.
6. harvest of entire websites on a regular and frequent basis, for individual discovery separate from a web archive	Direct Harvest	Web pages, often dynamic, often published via a CMS	Likely to be contained within the HTML and generated by harvesting tool	Harvesting largely automated, but selection, QA and administration probably much more significant than for stream 7.
7. Crawler harvesting of multiple websites, in periodic	Direct Harvest	Freely available web pages and documents only (i.e. no access restriction and no	Likely to be contained within the HTML and generated by harvesting tool	Largely automated, except for QA and administration.

snapshots for a web archive.		login or password required)		
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The need for deposit libraries to develop systems and processes to cater for all seven of these broad methodologies, plus the fact that in practice most publishers will have unique variances within these broad methodologies, means that implementation of any deposit scheme will need to be phased in gradually over a period of years.

Many publishers are very supportive of voluntary deposit initiatives and few publishers actively oppose them; nevertheless experience from the existing voluntary scheme for e-journals and other voluntary deposit schemes is that, without a legal framework to support the schemes, in practice only 20%-25% of publishers invited to deposit actually do so, although the ratio may be higher for larger publishers of scholarly journals and other work of academic interest. Some do not participate because they are not required to do so, but others may not participate because of copyright complications and legal or other risks in depositing on a voluntary basis. Therefore, a high proportion of the effort the deposit libraries make to identify, contact and request publishers to deposit their material is effectively wasted, adding to overall costs. We estimate the following scenario under this option:

- In Year 1, up to approximately 60,000 publications (monographs and serial parts) would be deposited, processed and archived.
- By Year 4, approximately 100,000 to 140,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 18% to 26% of those eligible for deposit.
- By Year 10, approximately 210,000 to 300,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 40% to 55% of those eligible for deposit.

Taking these considerations into account, the following deposit library costs are estimated for voluntary deposit schemes.

Table 4: Cost of voluntary deposit schemes under Option 2

Acquisition costs (promoting deposit schemes and negotiating voluntary agreements with individual publishers)	£0.3m-£0.4m per annum
Ingest costs, including processing metadata to make the content discoverable and accessible for researchers.	£0.3m-£0.5m in Year 1, rising to £0.7m-£0.9m p.a. by Year 10
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.6m-£0.9m in Year 1, rising to £1.0m to £1.3m p.a. by Year 10

Option 2: Risks

Risk of Loss — by year 10, only about 0.1% of freely accessible websites and publications, plus 40% to 55% of other individual publications made available each year would be archived. Therefore most of the remaining 99.9% of websites and 45% to 60% of other publications risk being lost forever.

This approach does not give the legal protection that would be afforded to the Legal Deposit Libraries and publishers if Regulations are put in place against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.

Copyright Risk — Publications, including websites and other digital files made available on the internet, are protected by copyright. They may also contain content that has been produced by several contributors, such as articles or chapters by different authors and images by photographers or artists, each of whom may own the rights to their work and have negotiated specific terms on which it can be used; these terms may not allow for copies to be deposited and made available to researchers as part of an archive.

Therefore the publisher depositing, or the website owner giving permission for a deposit library to harvest, may risk a claim for infringement of copyright for one or more reasons.

- The publisher may be ignorant of copyright law and simply deposits or gives permission without giving proper consideration to intellectual property rights. There is evidence, from case studies undertaken by the Legal Deposit Advisory Panel, that many website owners are unaware of their

potential liability, for instance believing wrongly that content made freely available on the web is not copyrighted and that anyone may copy and reuse without legal consequences.

- The publisher, although attempting to clear rights before depositing or giving permission, may be unable to identify or contact some rights holders; evidence of attempts to do so might help defend against a claim, but the publisher would nevertheless incur costs in dealing with it.
- For websites and on line publications which include content from multiple contributors, such as some magazines or newspapers, the publisher may clear rights at a point in time but then fail to monitor and update the rights as content is updated and new content is added.

The deposit libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works.

- Content delivered by a publisher is normally deposited without any confirmation or clarification about the associated rights for using it, and the library must simply rely upon the terms of the voluntary scheme. For reasons of long-term preservation and continuing access, deposit libraries usually need to make additional copies or “format shift” the content, and providing on line access to it might be considered a form of republishing; although these uses may be made clear in the terms of the scheme, they may not be sufficient to defend the claims of a third party rights holder who was not made aware of the deposit and who did not give specific permission.
- Permissions given by a website owner may not cover all of the site’s content; if this is not clear, a deposit library might inadvertently copy parts of it for archiving without appropriate authority.
- A court might find that deposit libraries cannot rely upon the permissions given by a website owner.

Defamation Risk — A person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. For example the complainant might have obtained a decision (whether via the court or by a separate settlement with the publisher) for all copies to be withdrawn or for an apology or retraction to be published, but the archived copy remains as first published. And under case law (*Loutchansky v Times Newspapers Ltd and Others No 2*) it may be argued that creating a temporary screen copy of a digital work, which happens each time that a person accesses a digital work, constitutes a form of re-publishing and therefore the deposit library might arguably be creating a new defamation. The deposit libraries will put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. However such procedures would typically depend upon the deposit libraries being made aware of the defamation by the original publisher, who might also therefore bear some responsibility if there is any failure in communications. Given the nature of some websites and the material they contain, the likelihood of defamatory material being inadvertently collected and included with the archive is relatively high, and this may therefore be a significant risk.

Option 2: Administrative burden calculations

The administrative burden for deposit libraries has already been included within the costs above. This section considers the administrative burden for publishers in dealing with requests from the deposit libraries and in depositing works or arranging permission for harvesting.

a) Deposit library harvesting (permissions-based)

Since January 2005, the British Library has sent permission requests to 14,035 website owners (as at 30 April 2010), but successfully obtained written permission in only 3,411 cases, or 24.3% of those actually contacted. The experiences of other deposit libraries and members of the UK Web Archive are similar. Therefore, on the basis of this ratio, in order that the deposit libraries may secure permission for 700-1200 new websites each year, at least 2,800 to 4,800 website owners must be contacted.

The administrative burden for each of these website owners varies widely, depending upon the nature of the website and whether it includes content from a single or multiple rights holders, and upon the nature, size and structure of the organisation publishing it. For instance it is administratively easy for a single individual such as a blogger, writing and publishing their own material via their own website, to provide permission, because they would be the sole rights holder for their own material; it may simply require half an hour to read and consider the request then sign a form and send it back to the relevant deposit library. But in other cases it may involve many person-hours of administrative effort: for example, a large

national museum displaying pictures and descriptions of their treasures together with articles and other content might need to involve several people within the museum to identify and assess their own position, before also perhaps contacting multiple rights holders outside the museum. Even if their decision is that permission cannot be granted, the website owner will have an administrative burden simply by receiving and dealing with the deposit library's request, and so will the individual rights holders.

Publishers surveyed by the Legal Deposit Advisory Panel confirmed that dealing with permission requests can be a costly process, although none quantified the amounts involved. However based upon an assumption that 80% of persons receiving a request would need to refer to at least one other person in their organisation, and that at least half of such organisations would need to contact 2 or more rights holders who also reply, and that each stage takes up to half an hour of administrative time and effort, then the overall administrative burden might be a once-only cost of at least £90 per website, or a minimum of £0.25m to £0.4m per annum for 2800 to 4800 requests, potentially much more. This also excludes the probability that many website owners would also need to put procedures in place to monitor for any change to their rights position, and potentially update the permission given to the deposit libraries.

b) Voluntary deposit schemes

The administrative burden for publishers in depositing under a voluntary scheme comprises three main elements:

1. administration in dealing with the original request and/or decision to participate in the voluntary scheme, including perhaps an assessment of the risks and benefits to the publisher.
2. administration, and perhaps technical support, to set up a depositing mechanism and process with the deposit libraries for delivering material or permitting access to download.
3. the transactional costs of each individual deposit or delivery.

There is no authoritative or recognised analysis, broken down by type of publication or publisher, of the number of digital works that are being published in the UK behind a pay wall or with some other form of restriction upon access. Impacts have therefore been estimated by reference to print, taking the average number of legal deposit deliveries to the British Library of (printed) monographs, newspaper issues and serial issues each year during 2006/07 to 2008/09 as a baseline:

- 116,822 Monographs
- 148,844 Newspaper issues
- 271,432 Periodical issues

The Office for National Statistics produces annual reports ("UK Business: Activity Size & Location") of the number of UK organisations registered for VAT and/or PAYE by industry type. The average of ONS figures produced in 2007-09 for Standard Industrial Classification codes 2211, 2212, 2213, 5811, 5813 and 5814 (publishing organisations) have been used to estimate the potential number of organisations, broken down by number of employees that may be affected by this proposal.

Table 5: Number of publishing organisations

	Book Publishers	Newspaper Publishers	Periodical Publishers	TOTAL
Micro (1 to 9)	2,212	387	1,747	4,346
< 20 (10 to 19)	125	28	227	380
Small (20 to 49)	78	27	173	278
Medium (50 to 250)	50	12	93	155
Large (250+)	15	23	37	75
Total	2,480	477	2,277	5,234

It must be acknowledged that the figures in this table do not include other types of organisation such as universities, trade associations, professional bodies or scientific research organisations who also publish as a secondary activity. However 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 deposit libraries. Therefore, overall, it is reasonable to take the numbers in this table as a basis for calculations, allowing a margin for error.

Using the number of print publications deposited at the British Library and ONS data in table 5 as points of reference, a weighted distribution of the number of book, newspaper or periodical publications issued by organisations of different sizes can be estimated.

Based upon a survey carried out by the publishers Association, we estimate that the publisher's average administrative burden for depositing will typically be between £3 and £6.50 per deposit, with an initial setup cost for procedures of between £1,300 and £2000 per publisher, although there may be significant variations between individual publishers. On the basis of these assumptions, if every publisher were to begin depositing immediately every book title, newspaper or periodical issue that they publish on line, the total burden could theoretically amount to between £1.6m and £3.5m per annum with between £6.8m and £10.5m initial setup costs. However, because voluntary schemes would necessitate a gradual implementation scaling up over a period of years, and because the experience from existing pilots suggests that, even after ten years, the number of deposits is unlikely to exceed 50%-60% of publications from 20%-30% of publishers, in practice the overall burden including setup costs for those

publishers who agree to participate is likely to be less than a total of £3m for the first 2 years, will range between £0.4m and £1.8m per annum in each of the next six years, and will only reach as much as £0.7m to £2.7m per annum in years 9 and 10 as the final phase of implementation is completed. In subsequent years, once all setup is complete and a “steady state” of depositing has been achieved, the administrative burden is likely to range between £0.6m and £1.9m per annum.

Option 2: Wider impacts

In depositing copies of works or permitting them to be downloaded, at their own cost, and in permitting them to be made available to researchers, publishers are potentially giving up a part of their full prerogative under copyright to exploit works and benefit from investment they made by publishing them. For printed works the potential impacts, of depositing up to six copies and of their being made available to readers in the deposit libraries, are limited; the production cost of up to six copies is relatively small when set against the sales revenue earned from hundreds or thousands of copies, as is the likelihood of sales actually being diminished by the existence of six copies being made freely available in the specified libraries.

However for digital publications, the risk could potentially be higher if there are not controls to govern precisely how they may be used. It is potentially easy and cheap to copy digital works in their entirety, and the copies are often “perfect”, i.e. undistinguishable in quality from the originals. It is also potentially very easy and cheap to disseminate such copies widely. Therefore publishers are naturally concerned to ensure that any voluntary schemes have rules governing how the works they deposit may be used, that such rules must not prejudice their interests, and that the deposit libraries have proper controls in place to enforce these rules.

For websites and other material that the publisher makes available for open access, i.e. without restriction, most publishers are content to permit the deposit libraries to make the archived (harvested) copies available on the same basis, provided that there is a notice or some other means of clearly identifying them as archived copies and distinguishing them from the live or updated versions on their own websites. Permissions given to the British Library and other organisations participating in the UK Web Archive have all been on this basis. However some publishers who provide open access for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications, may not wish to allow the archived copies to be made freely available on line and would not give permission on this basis. Therefore such publishers may choose not to participate in the web archive in this Option 2.

For other digital material that a publisher deposits under a voluntary scheme, especially publications which are otherwise paid for, the publisher and deposit libraries will normally seek to put in place rules which emulate the de facto limitations of printed works:-

- The archive copies may only be used by authorised readers on the (physical) premises of the deposit libraries—they are not to be made available remotely or on line.
- Each work may only be used by one reader at a time in each deposit library.
- The works must be secured to prevent any unauthorised copying.
- The deposit libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

For a small number of publications which are of very high value and sold in very small volumes, even these provisions may not be sufficient to avoid prejudicing the publisher’s interests. An informal but sensible practice has therefore grown up over the years for printed works, whereby the deposit libraries agree to embargo all access to the archived copies for a period of up to five years, so that there is no impact at all upon the publisher’s interests during the time in which the publisher might expect to benefit. These embargos are permitted at the discretion of the deposit libraries, but have been used to avoid prejudicing a publisher’s commercial interests where the availability of even one copy that is free to read in a deposit library might be harmful to the publisher’s sales. This solution may also be used to support voluntary schemes for digitally published works.

Overall such provisions would ensure that permissions-based harvesting and voluntary deposit schemes will not have a harmful impact upon the publisher’s business nor unduly prejudice the publisher’s interests. However on rare occasions, if the publisher and deposit library do not find a compromise which

will permit depositing or permitting a deposit library to harvest without also prejudicing the publisher's interests, the voluntary scheme does not impose any obligation to deposit.

Option 3: Statutory regulation allowing libraries to harvest works directly from the internet for free content only and a voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions.

The third option is to facilitate central archiving initiatives by the deposit libraries, through passing statutory regulation which would automatically give them permission, as an exception to copyright, to download copies of works directly from the internet for archiving purposes.

Without the need to obtain separate permission in advance from each rights holder, the deposit libraries would be able to use more automated processes to take periodic “snapshots” of many more websites in the UK domain, to be incorporated into the archive and made available to researchers. Acquiring material under the Legal Deposit Libraries Act 2003 also offers certain other legal protections, against the risk of defamation claims in respect of archived material. It also obviates any need for the website owner or publisher to contact rights holders and respond to permission requests, thus avoiding the creation of any administrative burden.

However a limitation of this approach is that the website or on line content must be freely available i.e. published without access restrictions, before it can be captured by a deposit library’s automated harvesting system. Therefore, for all other on line content where automated harvesting is impractical or where the deposit library would need to engage with a publisher to obtain access for downloading, there would still be a need for voluntary deposit schemes, encouraging individual publishers to deposit or permit the deposit libraries to download copies of their publications.

Option 3 therefore comprises two elements: automated harvesting under statutory regulation by the deposit libraries wherever this is practical, but combined with voluntary schemes for other works in which publishers deposit or provide access for the deposit libraries to download copies.

Option 3: Costs and benefits

a) Deposit library harvesting under statutory regulation

The benefits, and the costs to deposit libraries, of adding to, maintaining and preserving the web archive using statutory regulation under the Legal Deposit Libraries Act 2003 have been modelled on the basis of assumptions about the potential size of the UK web domain, plus inferences about how harvesting activity for the UK Web Archive would change under regulation.

According to Nominet, the registrar for all .uk domains except .gov.uk and .ac.uk, over 8.5 million domains were registered in May 2010; after adjustments to subtract non-active or other out-of-scope websites and to add readily identifiable UK websites in .com and other domains, LDAP estimates that approximately 5.4 million websites are potentially in scope for harvesting as at June 2010, rising to perhaps 14.2 million by 2020, and equating to about 135 terabytes of material that could be harvested in each “snapshot” during 2010, rising to perhaps 360 terabytes in 2020. This estimate is on the basis of certain core assumptions:

- that about 35% of registered domains are unused, inactive, or “churned” every year.
- that about 2.5% of domains are protected by access restrictions
- that the weighted average size of a harvestable website, excluding much audio-visual content because it is outside the scope of the Legal Deposit Libraries Act and excluding all content published with access restrictions, is approximately 25 megabytes (varying between less than 5 megabytes for 80% of websites up to over a gigabyte per site for the top 0.5%)

Removing the need to obtain prior copyright permission from each rights holder means that a domain-wide snapshot of all the websites in scope becomes a practical possibility. Some curatorial selection activity would still continue, in order to identify sites of special interest which would benefit from additional quality controls and quality assurance in the harvesting process, or to choose sites and content about selected events or themes, to form additional special collections within the overall archive.

In contrast with the permissions-based harvesting in Option 2, this option allows for a much more comprehensive web archive. Therefore the volume of material collected can be much greater, with significant economies of scale in the collecting process. Overall the total costs of website archiving in the Legal Deposit Libraries would be approximately double those in Option 2, but the volume of material

collected could be hundreds if not thousands of times greater, and would be a much more complete and useful record of the nation's digitally published heritage.

Overall, the deposit libraries' costs for supporting this activity are estimated as follows:

Table 6: Cost of deposit library harvesting under statutory regulation, in Option 3

Costs of selecting websites for additional QA or special themed collections.	£0.2m-£0.3m per annum
Costs of harvesting and quality-assuring websites on average one to two times p.a., with metadata and discovery tools.	£0.3m-£0.5m in Yr1, rising to circa £0.4m-£0.6m p.a. by Yr 10
Annual costs of storage, preservation and ongoing technical support for the archived websites (estimated 100 terabytes in Year 1, rising to 5 petabytes by Year 10)	£0.4m-£0.5m in Yr1, rising to circa £0.7m-£1.1m per annum from Yr4 onwards
TOTAL (but excluding set-up costs and allocated costs of maintaining access environment, security etc)	£0.9m-£1.3m in Yr1, rising to circa £1.4m-£1.9m per annum by Yr10

This equates on average to between approximately £280 and £380 per annum for each terabyte of data archived over a ten-year period, and each archived snapshot could potentially include up to 100% of the UK websites in scope.

The benefits of this activity will be received mainly by researchers and future generations, being able to use the archive as a resource, and by the nation in safeguarding a part of its digital heritage. The deposit libraries estimate that a regulation for harvesting by deposit libraries will facilitate the creation of an archive of material that is published without access restrictions.

b) Voluntary scheme for on line publications for which there is a charge or which are subject to public access restrictions

However in Option 3 the regulation is limited in its effect and would not cover any material that is published with access restrictions. Therefore the regulation would exclude almost all professionally published works which are paid for, or which require a subscriber login or some other form of registration, password or access mechanism. Thus a vital part of the UK's digitally published heritage i.e. that which is of most obvious and immediate benefit in scholarly research, would still not be covered adequately by the regulation.

Archiving and preserving such material would still require the same kind of voluntary deposit schemes and arrangements that were described under option 2, with the same upper limit on benefits.

- In Year 1, up to approximately 60,000 publications (monographs and serial parts) would be deposited, processed and archived
- By Year 4, approximately 100,000 to 140,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 18% to 26% of those eligible for deposit)
- By Year 10, approximately 210,000 to 300,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 40% to 55% of those eligible for deposit).

Taking these considerations into account, the following deposit library costs are estimated.

Table 7: Cost of voluntary deposit schemes under Option 3

Acquisition costs (promoting deposit schemes and negotiating voluntary agreements with individual publishers)	£0.3m-£0.4m per annum
Ingest costs, including processing metadata to make the content discoverable and accessible for researchers.	£0.3m-£0.5m in Year 1, rising to £0.7m-£0.9m p.a. by Year 10
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.6m-£0.9m in Year 1, rising to £1.0m to £1.3m p.a. by Year 10

Option 3: Risks and assumptions

a) Risk of Loss — It is assumed that regulation will permit the deposit libraries to harvest, limited only by available resources and technology. Therefore, up to 100% of freely available websites and open access material could be collected by harvesting, but only via periodic “snapshots”; the frequency of snapshots may vary by website but an overall average of once to twice per annum has been assumed for this Impact Assessment. Therefore any material which is published but then removed from the website before the next snapshot may still be lost. Furthermore, by year 10, only 40% to 55% of other individual publications made available each year would be archived through voluntary schemes.

Therefore most of the remaining 45% to 60% of other individual publications risk being lost forever. Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through Section 8, copyright and database rights are not infringed by the deposit libraries harvesting copies from the internet and through Section 10 the deposit libraries (or publishers), subject to certain conditions, are “...not liable in damages, or subject to any criminal liability, for defamation...” in respect of using deposited copies.

Therefore, for material harvested through regulation, these clauses in the Act mitigate most of the legal risks described under Option 2, and this is a significant benefit. However, those risks still remain undiminished for the remaining material that would be collected or deposited under voluntary schemes:

b) Copyright Risk — The publisher who deposits or permits a deposit library to download material that cannot be harvested under regulation may risk a claim for infringement of copyright for one or more reasons:

- The publisher, although attempting to clear rights before depositing or giving permission, may be unable to identify or contact some rights holders; evidence of attempts to do so might help defend against a claim, but the publisher would nevertheless incur costs in dealing with it.
- For on line publications which include content from multiple contributors, such as some magazines or newspapers, the publisher may clear rights at a point in time but then fail to monitor and update the rights as content is updated and new content is added.

The deposit libraries may also risk a claim for copyright infringement in respect of the archived snapshots of websites or deposited copies of other works.

- Content delivered by a publisher is normally deposited without any confirmation or clarification about the associated rights for using it, and the library must simply rely upon the terms of the voluntary scheme. For reasons of long-term preservation and continuing access, deposit libraries usually need to make additional copies or “format shift” the content, and providing on line access to it might be considered a form of republishing; although these uses may be made clear in the terms of the scheme, they may not be sufficient to defend the claims of a third party rights holder who was not made aware of the deposit and who did not give specific permission.
- The permission to download given by a publisher may not cover all of the content they make available through the internet; if this is not clear, a deposit library might inadvertently download and archive some content without appropriate authority.
- A court might find that deposit libraries cannot rely upon the permissions given by a publisher.

c) Defamation Risk — As described under Option 2, a person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. Although this risk is mitigated by the Act for material harvested under regulation, it remains undiminished for material deposited under voluntary schemes. The deposit libraries will put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. However, such procedures would typically depend upon their being made aware of the defamation by the original publisher, who might also therefore bear some responsibility if there is any failure in communications.

Option 3: Administrative burden calculations

The administrative burden for deposit libraries has already been included within the costs above. This section considers the administrative burden for publishers in dealing with requests from the deposit libraries and in depositing works or arranging permission for harvesting.

a) Deposit library harvesting under statutory regulation

Because regulation would permit the application of Section 8 of the Act, through which material copied by a deposit library from the internet does not infringe copyright or database rights, there is no longer any need for the deposit library to contact the website owner in advance for permission. Nor is there any need for a publisher or website owner to put procedures in place to monitor rights and permissions status specifically for deposit purposes.

It is the custom of some website owners and publishers to use robots.txt, ACAP or other conventions and protocols to inform the automated harvesting tools used by web search companies and other organisations about any pages or files that they wish to prevent being indexed. Therefore some website owners or publishers may wish to amend their robots.txt or ACAP files with regard to the deposit libraries, in order to reflect the effect of regulation in giving a special dispensation for archiving; they might see this as an administrative burden. However in fact it is not necessary for a publisher to take any action; statutory regulation would effectively give the deposit libraries copyright permission to copy material whether or not the publisher has such tools in place, and their doing so does not otherwise affect or detract from the publisher's use of such tools. Deposit libraries will use standard automated protocols in order to inform the website manager (via a "user-agent string" submitted to the web server's log of server requests) on each occasion that a copy of their content is harvested for legal deposit purposes; the website owner may choose whether or not to use this information, but there will be no requirement for a website owner to make any change to their robots.txt files, nor take any other action. Regulation would also permit the application of Section 10 of the Act, with its legal comfort against defamation, effectively eliminating any need for a publisher to monitor and advise a deposit library of any defamatory material contained on their website.

So, for material harvested by a deposit library through regulation, the administrative burden for publishers is effectively £ Nil.

b) Voluntary deposit schemes

However an administrative burden for publishers does remain in respect of depositing under a voluntary scheme. As described under Option 2, this burden essentially comprises three main elements:

1. administration in dealing with the original request and/or decision to participate in the voluntary scheme, including perhaps an assessment of the risks and benefits to the publisher.
2. administration, and perhaps technical support, to set up a depositing mechanism and process with the deposit libraries for delivering material or permitting access to download.
3. the transactional costs of each individual deposit or delivery.

The same calculation as described under Option 2 has been made, using the same base figures for estimating the number of publications and publishers in each category. That is:

- the number of digital publications which are potentially eligible for deposit has been estimated by reference to print, taking the average number of legal deposit deliveries to the BL of (printed) monographs, newspaper issues and serial issues each year during 2006/07 to 2008/09 as a baseline
- the number of publishing organisations, broken down by number of employees and by type of publication (books, newspapers and other periodicals) has been based upon information produced by the Office for National Statistics and shown in Table 5.

Again, we estimate that the average administrative burden for publishers of depositing will typically be between £3 and £6.50 per deposit, with an initial setup cost for procedures of between £1,300 and £2000 per publisher. Voluntary schemes would necessitate a gradual implementation scaling up over a period of years, and the experience from existing pilots suggests that the number of deposits is never likely to exceed 50%-60% of publications from 20%-30% of publishers. Therefore, in practice, the overall

burden including setup costs for those publishers who agree to participate is likely to total less than £3m for the first 2 years, will range between £0.4m and £1.8m per annum in each of the next six years, and only reach as much as £0.7m to £2.7m per annum in years 9 and 10 as the final phase of implementation is completed. The final administrative burden in subsequent years, once a “steady state” of depositing has been achieved, is likely to be between £0.6m and £1.9m per annum.

Option 3: Wider impacts

As described under Option 2, in depositing copies of works or permitting them to be downloaded, at their own cost, and in permitting them to be made available to researchers, publishers are potentially giving up a part of their full prerogative under copyright to exploit works and benefit from investment they made by publishing them.

For websites and other material that the publisher makes available for open access, i.e. without restriction, although many if not a majority of publishers are content to permit the deposit libraries to make the archived (harvested) copies available on the same basis, some publishers who provide open access for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications, would not. This is because making archived copies openly available on the same basis as the publisher’s own offering might potentially cause users of the publisher’s website to use the archived copies instead, causing a loss of web traffic to the publisher’s website.

Therefore all material archived through regulation may only be used in ways that are permitted by the Act and through regulations. An important limitation built into the 2003 Act, by virtue of its definition of a reader in Section 7, is that archived copies may only be used by authorised readers on the (physical) premises of the deposit libraries—they may not be made available remotely or on line. Access, to the same relevant material, for non-print deposit content would be restricted to one viewing terminal at any one time in each of the Legal Deposit Libraries. This mirrors the approach for books where a maximum of only 6 copies of a work are available for simultaneous reading, for digital content. This limitation effectively avoids any real risk of prejudicing such commercial models in which advertising revenue or other benefits depend upon many thousands or even millions of users visiting the publisher’s website and viewing their material.

For other digital material that a publisher deposits under a voluntary scheme, typically publications that are sold or paid for by subscriptions, the publisher and deposit libraries will normally seek to put in place rules which emulate the de facto limitations of printed works:-

- Again, the archive copies may only be used by authorised readers on the (physical) premises of the deposit libraries and may not be made available remotely or on line.
- Each work may only be used at one terminal at a time in each deposit library.
- The works must be secured to prevent any unauthorised copying.
- The deposit libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

As in Option 2, for the small number of publications which are of very high value and sold in very small volumes, temporary access embargoes may be permitted, to avoid prejudicing a publisher’s commercial interests where the availability of even one copy that is free to read in a deposit library might be harmful to the publisher’s sales. However on rare occasions, if the publisher and deposit library do not find a compromise which will permit depositing or permitting a deposit library to harvest without also prejudicing the publisher’s interests, there is no obligation to deposit as this scheme only covers voluntary deposits.

Overall, the restriction to users on library premises for archive copies of open access material harvested under regulation, and the additional provisions under voluntary deposit schemes for other material, all go to ensure that depositing will not have a harmful impact upon the publisher’s business nor unduly prejudice the publisher’s interests.

Option 4: Statutory regulation for both library harvesting and, upon request, publisher delivery of other works

The fourth option is to make regulations which both facilitate harvesting by the Legal Deposit Libraries and also imposes an obligation upon a publisher to work with the deposit libraries in ensuring that other material is archived.

As described under Option 3, under regulation the deposit libraries would be able to use more automated processes to take periodic “snapshots” of websites in the UK domain, to be incorporated into the archive and made available to researchers.

For content which cannot be harvested in this way because it is not freely available but published with access restrictions, or where archived “snapshots” would not be sufficient as a record of the digital heritage, a formal deposit process is also proposed:

- Deposit of such publications will be required upon request to individual publishers by the legal deposit libraries. Legal Deposit Libraries and publishers will negotiate and agree what is to be deposited and an appropriate delivery method.
- The six Legal Deposit Libraries will share or distribute publications to each other so that a publisher need only deposit via a single channel.
- Publications will be made available to readers for access for reading and copying (print only) within constraints established by the Act and secondary regulation, and within a digital environment where Legal Deposit Libraries are able to enforce these constraints.
- Separately, representatives from the legal deposit libraries and the publishing industry will consider guidelines to underpin various aspects of achieving legal deposit, as well as draw up and publish related guidance notes and supporting information.

The regulations would impose an obligation on each publisher to deposit, or permit access to a harvester to download, copies of digitally published material with the deposit libraries, when asked to do so by a deposit library. But the regulations would also allow flexibility for both publisher and library to determine the most effective and cost-efficient way of doing so.

The regulations would also set out how deposited material may be used, but without being drafted so narrowly as to render them inoperable for new types of publication that are still being developed. It is expected that the deposit libraries will formulate progressive requesting policies. In practice it is expected that, alongside the regulations, the legal deposit libraries will also put in place a management structure. This will include a collections policy, taking advice from publishers and other stakeholders, to ensure that, in the wide range of different circumstances potentially affecting electronic publishing and the deposit and preservation of digital heritage, the principles and rules set out in regulation will be interpreted and applied in an appropriate way.

The need to secure the cultural heritage of a nation as reflected by its on line presence is recognised and being addressed by a number of countries. The full list of countries can be seen at table 13 at the end of this section. With such a high number of countries across Europe and the rest of the world building and maintaining such an archive of both on line and off line deposits it is important that the UK keeps pace to ensure that its digital heritage is being preserved and that there is an effective UK source for such material.

Option 4: Costs and benefits

a) Deposit library harvesting under statutory regulation

As for Option 3 the benefits, and the costs to deposit libraries, of adding to, maintaining and preserving the web archive using statutory regulation under the Legal Deposit Libraries Act 2003 have been modelled on the basis of assumptions about the potential size of the UK web domain, plus inferences about how harvesting activity for the UK Web Archive would change under regulation.

Removing the need to obtain prior copyright permission from each rights holder means that a domain-wide snapshot of all the websites in scope becomes a practical possibility. Some curatorial selection activity would still continue, in order to identify sites of special interest which would benefit from additional quality controls and quality assurance in the harvesting process, or to choose sites and

content about selected events or themes, to form additional special collections within the overall archive. But, in contrast with the permissions-based harvesting in Option 2, regulation allows for a much more comprehensive web archive, with periodic snapshots of virtually the whole UK domain. Therefore the volume of material collected can be much greater, with significant economies of scale in the collecting process.

Overall the total costs of website archiving in the deposit libraries would be the same as in Option 3, that is approximately double those in Option 2 but enabling a much more complete and useful record of the nation's digitally published heritage of open access material, published without access restrictions.

Table 8: Cost of deposit library harvesting under statutory regulation, in Option 4

Costs of selecting websites for additional QA or special themed collections.	£0.2m-£0.3m per annum
Costs of harvesting and quality-assuring websites on average one to two times p.a., with metadata and discovery tools.	£0.3m-£0.5m in Yr1, rising to circa £0.4m-£0.6m p.a. by Yr 10
Annual costs of storage, preservation and ongoing technical support for the archived websites (estimated 100 terabytes in Year 1, rising to 5 petabytes by Year 10)	£0.4m-£0.5m in Yr1, rising to circa £0.7m-£1.1m per annum from Yr4 onwards
TOTAL (but excluding set-up costs and allocated costs of maintaining access environment, security etc)	£0.9m-£1.3m in Yr1, rising to circa £1.4m-£1.9m per annum by Yr10

This equates on average to between approximately £280 and £380 per annum for each terabyte of data archived over a ten-year period, and each archived snapshot could potentially include up to 100% of the UK websites in scope.

The benefits of this activity will be received mainly by researchers and future generations, being able to use the archive as a resource, and by the nation in safeguarding a part of its digital heritage. The deposit libraries estimate that a regulation for harvesting by legal deposit libraries will facilitate the creation of a more comprehensive and also a more carefully selected archive of material that is published without access restrictions.

b) Request-based delivery of other works under statutory regulation

As described above, for many works, it is not technically possible for deposit libraries to download copies directly from the internet without the publisher providing the means to bypass a pay wall or access barrier. In some such cases both publisher and deposit library would prefer the publisher to deliver works to the library in discrete information packages rather than allow the deposit library to bypass normal website security and download the content directly, although both must also be available as an option for other cases.

At a high level, LDAP has advised that deposit libraries will need to support six main deposit methodologies, in addition to the seventh covering library harvesting for the web archive. These are illustrated in table 3 above. The diversity of publishers and publication formats requires regulations that are flexible enough to allow for a wide range of delivery options and other circumstances specific to individual publishers

The need for deposit libraries to develop systems and processes that are flexible enough to cater for all seven of these broad methodologies, plus the fact that in practice most publishers will have unique variances within these broad methodologies, means that deposit libraries can negotiate with publishers on the best way, for both parties, for publications to be deposited. Otherwise it would be an unreasonable burden for deposit libraries to provide for an almost infinite number of delivery processes and preservation requirements. Implementation of any deposit scheme must also be phased in gradually over a period of years.

Therefore a more collaborative 'partnership' approach between each publisher and library is proposed for such publications, and is practicable because of the much smaller number of publishers involved in comparison with harvesting all websites in the UK domain:

- A publisher will only be required to deposit when specifically asked to do so by means of a formal notice issued by a deposit library or its appointed representative.
- Notices will be on a publisher-by-publisher basis, applying to all relevant on line publications that are made available on or after the date of the notice (or perhaps, if mutually agreed by the publisher and the legal deposit libraries, to a defined sub-set of the publisher's output).
- The notice will allow a reasonable period of time, not to exceed 6 months, for the publisher to commence depositing electronically. Separate guidelines will indicate how the publisher and the legal deposit library may discuss and agree precisely what should be deposited and when, as well as an appropriate delivery method.

Although implementation will be gradual, probably taking up to ten years or so before a copy of all eligible publications being produced each year is also being archived, regulation will permit a much more comprehensive collection to be developed more quickly. The deposit libraries estimate that:

- In Year 1, up to approximately 160,000 publications (monographs and serial parts) could be deposited, processed and archived
- By Year 4, approximately 200,000 to 280,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 30% to 50% of those eligible for deposit
- By Year 10, approximately 430,000 to 600,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 75% to 100% of those eligible for deposit.

Taking these considerations into account, the following deposit library costs are estimated for notification-based deposit under statutory regulation.

Table 9: Costs of operating request-based deposit for other works under statutory regulation in Option 4

Acquisition costs (issuing requests and setting up deposit delivery arrangements with individual publishers)	£0.3m-£0.4m per annum
Ingest costs, including processing metadata to make the content discoverable and accessible for researchers.	£0.5m-£0.8m in Yr 1, rising to circa £0.8m-£1.2m p.a. from Yr 4 onwards
TOTAL (but excluding costs of set-up and ongoing support & preservation— see table 1)	£0.8m-£1.2m in Yr 1, rising to circa £1.0m-£1.5m p.a. from Yr 4 onwards

The main benefits of this activity will be received by researchers and future generations, being able to use the archive as a resource, and by the nation in safeguarding a part of its digital heritage. Regulation will permit the creation and preservation of an archive of digitally published works.

An important additional benefit of Option 4 is that, as each publisher implements electronic deposit, if they publish the same work in both print and non-print the draft Regulations provide that they may agree whether the print or non-print work should be deposited; electronic deposit will not be an additional obligation for such works.

Although some works may continue to be published only in printed form, and must therefore continue to be deposited as physical objects, the trend is towards publishing digital versions as well as, or sometimes instead of, printed works. Over time, therefore, the number of printed books, papers and periodicals being deposited should reduce, as each publisher by agreement with the deposit libraries begins to deposit the electronic versions instead.

In the short term, as the technical infrastructure and new processes for digital works are being developed alongside existing processes for printed items, dealing with electronic deposit will be an additional cost for the deposit libraries. However, in the medium to longer term, this gradual reduction in print deposits will permit savings to offset the costs of electronic deposit:

- It will become possible to reallocate resources currently involved with print deposit to electronic deposit, as the former reduces and the latter increases.
- Digital works will be deposited once, into a shared technical infrastructure for all of the deposit libraries instead of up to six printed copies all being processed, managed and preserved separately.

- The rate of growth for shelf storage in optimised preservation conditions (e.g. controlled for temperature and humidity) will slow, reducing future capital expenditure requirements.
- Delivering deposited copies to readers for their use will become a much more efficient and timely process, potentially saving many of the handling costs associated with physical objects.

This potential benefit must be enabled by formal regulation under the Legal Deposit Libraries Act 2003, allowing the transfer of the publisher's deposit obligation from the printed to the digital version of such publications. Therefore it can only be realised as an outcome under Option 4 in which such regulation is proposed.

Option 4: Risks and assumptions

a) Risk of Loss — Regulation will permit the deposit libraries to harvest and collect other access-restricted works more comprehensively, limited only by the availability of resources and suitable technology. Therefore, only material which is published but not collected during the period of implementation (scaling up over 10 years) or material which is published but then removed from a publisher's website before the next snapshot may still be lost. Overall, although there remains a small risk of losing some material, this risk is largely eliminated for most of the United Kingdom's digitally published heritage.

b) Copyright Risk — Material that is deposited or collected through regulation under the Legal Deposit Libraries Act 2003 benefits from two important legal comforts; through section 8, copyright and database rights are not infringed by the deposit libraries harvesting copies from the internet, and through section 9 the publisher is also protected against infringement of copyright, publication right or database rights, and against any claim for breach of contract, in respect of deposited copies. Therefore this risk is also mitigated or eliminated for both the deposit libraries and publisher.

c) Defamation Risk — As described under Options 2 and 3, a person who has been defamed in archived material may seek to claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. The deposit libraries will still put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. Also the original publisher who deposits material should theoretically inform the deposit libraries of any such claims. But the operation of section 10 of the Act dramatically reduces the risk of liability for any defamation claims in respect of the archived copies.

Option 4: Administrative burden calculations

The administrative burden for deposit libraries has already been included within the costs above. This section considers the administrative burden for publishers in dealing with requests from the deposit libraries and in depositing works or arranging permission for harvesting.

a) Deposit library harvesting under statutory regulation

As in Option 3, regulation would permit the application of section 8 of the 2003 Act, through which material copied by a deposit library from the internet does not infringe copyright or database rights. Therefore there is no longer any need for the deposit library to contact the website owner in advance for permission. Nor is there any need for a publisher or website owner to put procedures in place to monitor rights and permissions status specifically for deposit purposes.

It is the custom of some website owners and publishers to use robots.txt, ACAP or other conventions and protocols to inform the automated harvesting tools used by web search companies and other organisations about any pages or files that they wish to prevent being indexed. Therefore some website owners or publishers may wish to amend their robots.txt or ACAP files with regard to the deposit libraries, in order to reflect the effect of regulation in giving a special dispensation for archiving; they might see this as an administrative burden. However, deposit libraries will use standard automated protocols in order to inform the website manager (via a "user-agent string" submitted to the web server's log of server requests) on each occasion that a copy of their content is harvested for legal deposit purposes; the website owner may choose whether or not to use this information, but there will be no requirement for a website owner to make any change to their robots.txt files, nor take any other action.

Regulation would also permit the application of section 10 of the 2003 Act, with its legal comfort against defamation, effectively eliminating any need for a publisher to monitor and advise a deposit library of any defamatory material contained on their website.

So, for material harvested by a deposit library through regulation, the administrative burden for publishers is effectively £ Nil.

b) Notification-based delivery of other works under statutory regulation

The administrative burden for publishers in depositing, or permitting access for the deposit libraries to download, copies of other electronically copied works is similar to that in Options 2 and 3; the total burden is only higher in Option 4 because more publishers comply with statutory regulation than deposit under voluntary schemes, due to its added legal protections against copyright infringement and defamation problems. However, uniquely in Option 4, for many publishers the administrative burden of depositing electronically will be more than offset by savings in, or the complete elimination of, their administrative burden of depositing printed publications.

As described earlier, the burden in depositing electronically comprises three main elements:

1. Administration in dealing with the original request from the deposit libraries. This should be marginally less than the equivalent element under options 2 and 3 because the statutory obligation makes it unnecessary to assess risks and benefits before making a business decision about participating. However no such reduction has been assumed for the purpose of this Impact Assessment.
2. Administration, and perhaps technical support, to set up a depositing mechanism and process with the deposit libraries for delivering material or permitting access to download.
3. The transactional costs of each individual deposit or delivery.

On the basis of these assumptions, and findings from a survey by the Publishers Association, we estimate that the average administrative burden for publishers of depositing will typically be between £3 and £6.50 per deposit, with an initial setup cost for procedures of between £1,300 and £2000 per publisher.

The same calculation as described under Options 2 and 3 has been made, using the same base figures for estimating the number of publications and publishers in each category. That is:

- the number of digital publications which are potentially eligible for deposit has been estimated by reference to print, taking the average number of legal deposit deliveries to the BL of (printed) monographs, newspaper issues and serial issues each year during 2006/07 to 2008/09 as a baseline
- the number of publishing organisations, broken down by number of employees and by type of publication (books, newspapers and other periodicals) has been based upon information produced by the Office for National Statistics and shown in Table 5
- However in Option 4 it is assumed that more publishers will begin depositing and the number of publications deposited will be significantly greater, with a more rapid scaling up over the period.
- In Year 1, up to approximately 160,000 publications (monographs and serial parts) could be deposited, processed and archived, from perhaps 20% of publishers
- By Year 4, approximately 200,000 to 280,000 monographs and serial parts per annum issued by perhaps 25%-40% of publishers would be deposited, processed and archived, representing about 30% to 50% of those works that are eligible for deposit
- By Year 10, approximately 430,000 to 600,000 monographs and serial parts per annum would be deposited, processed and archived, representing about 75% to 100% of those eligible for deposit, from 75%-100% of publishers.

On this basis we estimate that the overall burden for notification-based deposit is likely to start in the first year at between £0.3m and £1.0m for the transaction costs, gradually increasing each year at a relatively constant rate as more publications are deposited. In year 4 the transaction costs would be between £0.6m and £1.8m and in year 10 they should reach a "steady state" of between £1.3m and 3.9m per annum.

Publishers' setup costs will vary each year, depending upon how many are requested by notification to begin depositing, but we estimate that the total of publishers' setup costs over the whole of the next ten years will be between £6.8m and £10.5m.

Therefore the total administrative burden for publishers over the entire ten-year period of electronic deposit is likely to be between £12.8m and £33.7m

However, uniquely in Option 4, it is also likely that this administrative burden for electronic deposit will be more than offset by savings in the total administrative burden for print deposit. As each publisher implements electronic deposit, their deposit obligation for works which are published in both print and digital media will transfer from the printed version to the digital version. Over time, therefore, the number of printed books, papers and periodicals being deposited should reduce, as each publisher by agreement with the deposit libraries begins to deposit the electronic versions instead. By Year 10, publishers' print deposit obligation might be almost completely eliminated except for a relatively small number of works that continue to be published only in printed form, and must therefore continue to be deposited as physical objects.

Benefits to main affected groups

We believe that there are benefits for both publishers and libraries under this option.

The benefits to libraries mainly relate to being able to harvest systematically producing a single on line archive and the potential savings that can be made from no longer needing to process a proportion of print deposits.

With regard to the benefits to publishers the new regulations will lessen the burden on publishers as they will no longer need to submit hard copies of publications and therefore will make savings and so accrue benefits from this option. However we recognise that monetising these benefits is not easy and while we have provided some estimates below we would like to use the consultation to gather better information and evidence on the estimates and assumptions we have used and also what publishers believe the costs currently are for depositing hard copies and therefore the amount they will save in future under this option.

Monetising benefits to publishers

In 2005 an estimate was made of the admin burden placed on publishers of hard-copy legal deposit which was in the region of £53m. However we recognise that this was not an accurate figure. This figure, produced by PWC, was part of a wider exercise to give an indication of the costs that Government places on businesses, not to produce statistically accurate data for each regulation. The Standard Cost Model was used, which works on a relatively simple methodology, by measuring the cost (in terms of the time it takes to complete and any external costs) of completing one transaction and then multiplying it by the number of times it happens. These costs were established through interviews with publishers. It is not clear if these figures include the cost of the publications themselves. Therefore, these are not accurate costs, but rather are indicative of the burden placed on business by the regulation.

However we do know that the regulations will lessen the admin burden and therefore have attempted a benefit calculation to monetise these savings and produce indicative benefits.

Assumptions

The £53m figure was made up of £15.0m costs for depositing at the BL; £34.4m for deposits with the other five libraries; £3.1m courier or delivery to BL. We have made an assumption for these purposes that the current admin burden cost is more likely to be 20% of this figure. Our logic for doing this is to be cautious with our assumptions about potential savings, as we believe that the £53m figure was an overestimation. To calculate the benefits we take the 20% of £53m figure (the total cost of hard copy deposit) and divide it by the number of items deposited in the BL (a total of 537,096), which has been used in other calculations in the IA, giving a cost per deposit of £19.74. (Please note that the figure for the number of items deposited is only a yearly average for the BL in 07/08/09, not for the other LDLs)

- We then made two further assumptions in order to work out the year-on-year savings.

- Firstly, we assume a 1 year lag to any realised savings because there will be a period of a year where there will be dual depositing of electronic and print in order for the LDLs to test the electronic system is working properly.
- Secondly we also assume that in any year only 50% of e-publications would previously have been print deposits. This is because savings will only be made against those publications which are produced in both print and electronic format and now only need to be deposited in e-form but not for those that are only published in print format as these will continue to be deposited as print copies.

Using these assumptions and the number of deposits, combined with the £19.74 cost per publication, we can estimate the year-on-year saving and therefore the NPVs.

- This leads to total 10-year savings (benefits) of £20.7m (low) to £28.8m (high) and a best estimate (mid-point) of £24.8m. In NPV terms, this is £19.6m.
- This compares to the costs to publishers of £12.8m (low) to £33.7m (high) with a best estimate (mid-point) of £23.2m. In NPV terms, this is £18.95m.

Therefore there is a saving to publishers which can be seen by comparing the benefits to publishers calculated above with the costs to publishers. The table below sets this out:

Table 10 – Cost and Benefits

Costs (£m)	Total Cost (NPV)	..of which to Publishers	...of which to Libraries
Low	44.4 (36.7)	12.8 (10.5)	31.6 (26.2)
High	77.5 (63.8)	33.7 (27.4)	43.8 (36.4)
Best Estimate	60.9 (50.2)	23.2 (18.9)	37.7 (31.3)
Benefits (£m)	Total Benefit (NPV)	...of which to Publishers	...of which to Libraries
Low	20.7 (16.4)	(all)	-
High	28.8 (22.8)	(all)	-
Best Estimate	24.8 (19.6)	(all)	-

Benefits to research and scholarship

A general benefit of extending legal deposit to non-print includes the availability and continued maintenance of a national and accessible archive of UK published materials for humanistic, social, economic and scientific research, for use by the academic community, by business and industry, by the professions, by government and by private individuals. Users benefit from a geographically distributed national published archive of national and international importance on multiple sites, saving time, costs of travel and subsistence.

Benefits to the UK

Extension of legal deposit will allow for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This in turn will benefit communities in the UK of key importance for its future well-being and prosperity: researchers and educators; wealth creators in current and emerging sectors of business and industry; and the scientific community. The nation also benefits from the international renown of the BL and the LDLs and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them.

Option 4: Wider impacts

As described in Options 2 and 3, by depositing copies of works or permitting them to be downloaded, at their own cost, and by permitting them to be made available to researchers, publishers are potentially giving up a part of their full prerogative under copyright to exploit works and benefit from the investment they made in publishing them.

For websites and other material that the publisher makes available for open access, i.e. without restriction, many if not most publishers might be content to permit the deposit libraries to make the archived (harvested) copies available on the same basis. However some publishers provide open access to their content for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications. Allowing open and unrestricted access to archived copies of their material might cause a loss of web traffic to the publishers' own websites, unduly prejudicing their legitimate commercial interests.

Therefore all material archived through regulation may only be used in ways that are permitted by the 2003 Act and through regulations. An important limitation built into the 2003 Act, by virtue of its definition of a reader in section 7, is that archived copies may only be used by authorised readers on the (physical) premises of the deposit libraries—they not be made available remotely or on line. Furthermore, regulation will put in place rules which emulate the de facto limitations in use of printed works:-

- Archived copies may only be used by authorised readers on the (physical) premises of the deposit libraries and may not be made available remotely or on line.
- Each deposited work may only be used at one terminal at a time in each deposit library.
- The works must be secured to prevent any unauthorised copying.
- The deposit libraries may make additional copies for preservation and continuation of access, but not in order to increase access and not for other purposes.

As in Options 2 and 3, for the small number of publications which are of very high value and sold in very small volumes, temporary access embargos may be permitted, to avoid prejudicing a publisher's commercial interests where the availability of even one copy that is free to read in a deposit library might be harmful to the publisher's sales. For any rare occasion in which a dispute arises between the publisher and deposit libraries about whether such an embargo is appropriate or about the period of embargo, enforcement will be in accordance with section 3 of the Legal Deposit Libraries Act 2003. Overall, the rules for access laid down in regulation, together with embargos will all ensure that legal deposit does not have any harmful impact upon the publisher's business nor unduly prejudice the publisher's interests.

Small Firms Impact Assessment

The structure of the publishing industry shows that there are varying sizes of businesses and by looking at the organisations registered for VAT within the ONS' UK Business: Activity Size & Location report we can identify publishing organisations. The table below indicates the range of business sizes and the number of small or micro businesses (those with 50 or less employees) accounts for 5004 of the total number. Therefore we recognise that there will be an impact on small businesses from the proposed regulations.

Table 11: Number of publishing organisations

	Book Publishers	Newspaper Publishers	Periodical Publishers	TOTAL
Micro (1 to 9)	2,212	387	1,747	4,346
< 20 (10 to 19)	125	28	227	380
Small (20 to 49)	78	27	173	278
Medium (50 to 250)	50	12	93	155
Large (250+)	15	23	37	75
Total	2,480	477	2,277	5,234

The 2003 Act states that any regulations should not pose a significant burden to publishing organisations and we have therefore ensured that any regulations do not do this. The regulations will look to LDLs to set up effective co-ordination for requests of deposits and they will work with publishing organisations to make sure that there is no duplication of requests and therefore no undue burdens are placed on these organisations. In particular for small firms we have accounted for them in our calculations. We have identified the costs for firms with less than 50 employees across newspapers, periodicals and book publishers to ensure we are identifying the different costs for small firms – both in terms of administrative burden and transition costs.

For on line publications for which there is a charge or which are subject to public access restrictions publishers must deposit these works within three months of a written request from a Legal Deposit Library unless the request specifies delivery within a period exceeding three months but no more than six months from receipt of the written request. We have allowed for the initial period to deposit to be negotiated to as long as six months in order to allow the publisher (particularly a small publisher) time to make any necessary technical set up changes to facilitate deposit.

The obligation only applies in relation to the first Legal Deposit Library to make a request so the obligation only applies once, again recognising the need not to place too much burden on publishers, especially small publishers.

To ensure we are effectively identifying costs to small publishers in the consultation we will ask publishing organisations to identify themselves by size of firm. This relates to questions were we are asking them to provide the current costs of submitting deposits and potential future set up and transition costs. This way we can gather further detail on the impact on small firms.

Summary and Preferred Option

The preferred option is 4, full statutory regulation for both library harvesting and, upon request, publisher delivery of other works, because it is the only option which achieves all of the policy objectives:

- Option 4 achieves the greatest benefit by enabling the United Kingdom's digital heritage of on line publications to be collected systematically and as comprehensively as possible. Other options do not achieve this goal.
- **Although the total costs over ten years in the deposit libraries of Option 4 are very slightly higher than the total costs of Option 3 over the same period, the difference is insignificant. But significantly more is achieved for the small extra cost, and the higher volumes of material being processed may lead to the possibility of greater economies of scale later on. Overall, Option 4 is the most cost-efficient.**
- Regulation and the supporting management infrastructure will provide clear, visible and legally enforceable rules governing how the deposited copies may be used. Option 4 balances the needs of libraries and researchers with the interests of publishers and rights holders, with assurance for all stakeholders that the terms on which material is archived and made available are not subject to arbitrary change.
- Regulation will give deposit libraries the necessary legal framework for ensuring that material may be preserved for ever and may continue to be used in future.
- The proposals in Option 4 ensure that the deposit scheme is manageable for libraries and does not impose any unreasonable burden on publishers.

Additionally:

- The individual burden for each publisher that deposits or permits their digital material to be copied by the deposit libraries is actually smallest in Option 4. The total burden of electronic deposit for all publishers is higher only because Option 4 is comprehensive in its effect, archiving more publications.
- **Option 4 also uniquely offsets the burden of electronic deposit against the burden for depositing printed publications, which may be larger. The impact for each individual publisher might vary but, overall and by the end of the 10-year period, the annual administrative burden in transaction costs of depositing electronic publications should be offset by even greater savings in the existing annual administrative burden for depositing printed publications.**

Table 12: Summary of costs and benefits for each option

10-year totals	Option 1	Option 2	Option 3	Option 4
Deposit libraries' operating costs (£M's)	0	21.6 – 30.0	28.0 – 39.0	29.4 – 40.8
Deposit libraries' set-up costs (£M's)	0	2.2 – 3.1	2.2 – 3.1	2.2 – 3.1
Publishers' burden: transaction costs (£M's)	0	6.3 – 15.8	3.8 - 11.4	7.6 – 22.9
Publishers' burden: set-up costs (£M's)	0	2.6 – 5.4	2.6 – 5.4	5.2 – 10.8
Benefits: websites archived (millions)	0	0.01 – 0.02	12.8 -17.5	12.8 -17.5
Benefits: web archive size (terabytes)	0	50 – 75	4500 – 6250	4500 – 6250
Benefits: e-books archived (000's)	0	240 – 330	240 – 330	475 – 650
Benefits: e-newspapers archived (000's)	0	400 – 550	400 – 550	800 – 1100
Benefits: e-periodicals archived (000's)	0	600 – 900	600 – 900	1250 – 1750
Other: Offset costs & burden of print deposit	No	No	No	Yes
Other: Mitigation of legal risks	No	No	Harvested websites only	Yes: harvested websites and other publications

Table 13: List of Countries which have introduced legislation for the deposit of either off line publications, on line publications or both¹⁵

Country
Austria
Belgium
Canada
Czech Republic
Denmark
Estonia
Finland
France
Germany
Hungary
Iceland
Italy
Japan
Latvia
Lithuania
New Zealand
Norway

¹⁵ This was compiled in early 2009. Further Legislation may have been introduced in these and other countries since, but we have not yet been able to confirm this.

Poland
Portugal
Romania
Russia
Serbia
Slovakia
Slovenia
Spain
Sweden

Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: In five years carry out a policy review
Review objective: Check that regulation is operating as expected
Review approach and rationale: Stakeholder reviews.
Baseline: Currently there is no baseline as this is new work
Success criteria: Are the Legal Deposit Libraries receiving the works they want without unduly impacting on business.
Monitoring information arrangements:
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]