

Impact assessment for the Legal Deposit Libraries (Non-Print Works) Regulations 2013

This document comprises the final proposal stage impact assessments for the legal deposit of UK on line and off line publications which together cover the full scope of the Legal Deposit Libraries (Non-Print Works) Regulations 2013.

The impact assessment is presented as follows:

1. **Impact assessment for the legal deposit of UK on line publications** pp. 1 - 23
2. **Impact assessment for the legal deposit of UK off line publications** pp. 24 - 39
 - **Annex A - Post Implementation Review (PIR) Plan** pp. 40 - 41

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

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

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

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

What are the policy objectives and the intended effects?

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

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. Do nothing – leave archiving responsibility to the market
 2. Statutory regulation (preferred option) – allowing for web harvesting of both freely available and access-restricted on line content with, in addition, alternative delivery of content by agreement if publishers prefer. We believe our preferred option will provide a high quality national archive while avoiding a disproportionate burden on the publishing industry or society as a whole.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2017					
Does implementation go beyond minimum EU requirements?			NA		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro YES	< 20 YES	Small YES	Medium YES	Large YES
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

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

Signed by the responsible Minister:  Date: 26/6/12

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

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

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

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

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

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

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	1.5	11.8
High	0.0	2.1	16.5
Best Estimate	0.0	1.8	14.1

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

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

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

Libraries will be able to harvest systematically, producing a single archive of the nation's on line published heritage for the benefit of researchers and future generations. Up to 100% of freely accessible websites and publications, plus 100% of other publications could be archived. The Evidence Base sets out a full qualitative discussion of the benefits that could accrue to society from these impacts.

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

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base

Policy Background

1. The UK's legal deposit system has evolved over the centuries but can be traced back to statutes for England and Wales in 1662 and for the whole United Kingdom in 1710. The current Legal Deposit Libraries Act 2003 obliges publishers to deposit, at their own cost, one copy of every printed publication that is published or distributed in the UK with the British Library and upon request, with up to five other libraries. Hereinafter these are referred to as the "legal deposit libraries":
 - British Library ("BL")
 - Bodleian Library, Oxford ("Bodleian")
 - University Library, Cambridge ("CUL")
 - Library of Trinity College, Dublin ("TCD")¹
 - National Library of Wales ("NLW")
 - National Library of Scotland ("NLS")².
2. The Legal Deposit Libraries Act 2003 extends existing legal deposit provisions for printed material to cover non-print works. The 2003 Act gives the Secretary of State for Culture, Olympics, Media and Sport ("Secretary of State") the powers to make secondary legislation bringing new and emerging publishing media under its scope. Such regulations must be approved by the affirmative resolution of each House of Parliament and may not be made unless the legal deposit libraries and publishers likely to be affected have been consulted. The Secretary of State must also be satisfied that the regulations do not unreasonably prejudice the interests of persons who publish works to which the regulations relate and there are not disproportionate costs to publishers.

Problem under consideration

3. A statutory legal deposit system has existed in the UK for more than 300 years for printed works. However resources of information and creative expression are increasingly being produced, distributed, accessed and maintained in non-print form. The majority of non-print works are made available on line. On line media includes the delivery of non-print works through, for example, a publisher's own website, e-books distributed via on line businesses such as Overdrive, or via aggregators such as Google News. A more limited amount of non-print publications such as encyclopaedias may be ordered off line, generally as DVDs, and other off line publications may be e-mailed to subscribers as opposed to being directly downloaded from a website. Without appropriate legal, technical and institutional frameworks to secure the protection of this non-print heritage, it is at risk of being lost forever.
4. This risk is recognised by the research community and by many publishers, especially those producing publications of scholarly or historical interest. It is also common to most nations and governments; for example on 15 October 2003 the UNESCO member states adopted a Charter on the Preservation of the Digital Heritage and there are, or have been, initiatives in many countries to extend the legal deposit system to include non-print (digital) publications. This Impact Assessment considers options for addressing non-print legal deposit in the UK, in relation to non-print (digital) content which is made available to the public on line.

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

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

5. In 2005, the Department for Culture Media and Sport (DCMS) set up the Legal Deposit Advisory Panel (LDAP) 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 LDAP submitted their recommendations for a self-regulated voluntary scheme, with active requesting by legal deposit libraries, in relation to non-print publications in microform and off line electronic media and UK on line publications, which are available free of charge and without access restrictions. A public consultation exercise was undertaken at the end of 2009 on the Panel's recommendations.³ In Spring 2010 LDAP submitted recommendations on UK commercial and protected on line publications. This led to a second consultation⁴, but the Government that on the basis of feedback from publishers we had insufficient evidence that the proposals were not overly burdensome. Our new consultation in February to May 2012⁵ revises the earlier proposals to place a lower burden on businesses. This impact assessment explains the process of arriving at a final preferred option for government intervention, and analyses the likely impact of this option on relevant stakeholders.

Rationale for intervention

6. The disappearance of published heritage in whatever form constitutes a loss of value and nations aim to maintain, increase and diffuse knowledge by assuring the conservation and protection of their documentary inheritance of books, papers, works of art and monuments of history and science.
7. Heritage in this form is a positive externality as it produces a number of "external" social benefits that exceed the "private" benefits that any individual would take into consideration when taking a costly market decision on archiving works. These benefits include improvements in mental wellbeing, education, and local/national identity. Further benefits include 'bequest value' that stems from preserving the heritage for future generations. The fact that these, often considerable benefits, are not taken account of in any free market decision on the archiving of works means that from the perspective of society there will be a tendency to systematically undersupply these materials.
8. For printed (non-digital) publications this externality is normally corrected by national libraries and archives, sometimes together with selected research libraries, systematically building and preserving a comprehensive collection of their nation's published output. Typically this activity is supported by a legal framework which requires publishers, at their own cost, to deposit a copy of each work with the specified library or libraries – an arrangement known as "legal deposit". This helps to ensure there is a single archive, overcoming potential coordination issues within a large and diverse sector. The benefit of published heritage can be found in a study commissioned by the British Library, which found the total value each year of the British Library to the UK economy was £363m, with £59m going directly to users of the services and £304m to wider society⁶.
9. Non-print works are increasingly becoming a feature of everyday life, and fulfil equivalent functions of information dissemination to the more traditional forms of print works. Failing to capture this non-print aspect of our published heritage would result in an uncorrected market failure. Government should intervene to avoid this societal loss.

³ http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference_library/consultations/6506.aspx

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

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

⁶ British Library (2004), *Measuring Our Value*, London: British Library www.bl.uk/pdf/measuring.pdf

Policy objectives

10. Given the problem under consideration and the rationale for intervention set out above, government action should have several policy objectives:
 - a. To ensure a national archive of non-print publications.
 - b. To enable an efficient system in which material is archived and preserved in the legal deposit libraries.
 - c. To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders.
 - d. To facilitate long-term preservation, so that the material may continue to be used in future.
 - e. To ensure long term viability by requiring both legal deposit libraries and publishers to share part of the responsibility for archiving without imposing an unreasonable burden on any institution.
11. The proposal for the legal deposit of on line publications discussed in this impact assessment is one part of a linked proposal. Proposals for the legal deposit of off line publications go hand in hand with this proposal and provide an overall benefit when taken in the context of the wider policy area. In line with advice from the Regulatory Policy Committee, we have produced separate impact assessments for off line and on line publications, and this impact assessment for on line publications should be viewed alongside the impact assessment for off line publications⁷.

Options considered

12. This impact assessment deals with the final preferred policy option that is intended to be taken forward as proposed legislation. The process of arriving at this final preferred policy option is nevertheless important. This option has developed from the process of public consultation.
13. Following on from the two previous public consultations⁸ noted in paragraph 5, the DCMS ran a new consultation between February and May 2012.⁹ This consultation ran along broadly similar lines to the earlier two, but included several significant amendments to ensure that burdens on business (which had previously been considered to be too great for the regulations to proceed further) were reduced, as well as including further clarifications on the scope of the regulations. A significant change (discussed later on in this impact assessment) was that micro-businesses were exempt from certain aspects of the regulations under a moratorium lasting until April 2014.
14. Our preferred option, presented in the 2012 consultation, was option 5 (statutory regulation allowing for web harvesting of both freely available and access-restricted on line content with, in addition, alternative delivery of content by agreement if publishers prefer).
15. Option 5 was added following feedback received in the previous consultation during 2010-11 that the options available at that stage posed too great a burden on publishers.
16. Under option 5, legal deposit libraries will request and collect freely available and access-restricted on line work (which is within scope of the 2003 Act) by means of web

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

⁸ http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/reference_library/consultations/6506.aspx, <http://www.culture.gov.uk/consultations/7449.aspx>

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

harvesting software. Where the content is freely available the web harvester will simply visit the website and collect the content. Where the content is subject to an access restriction, the request by the web harvester to the login page will be deemed to be a request for the content behind that login page. The publisher will have a notice period to provide login details to the deposit library to allow for the delivery of the access-restricted content, or to pro-actively negotiate an alternative method of delivery with the deposit library. If the publisher does not provide login details to allow for delivery or seek an alternative delivery arrangement, the publisher will be in breach of the obligation under the 2003 Act to deliver and will be subject to the enforcement provisions regarding delivery in the 2003 Act.

17. In addition to this regime, a publisher may agree with a deposit library an alternative way to deliver on line material. This is a voluntary, alternative option which publishers may choose to adopt if they wish, but if publishers do not agree an alternative method of delivery, they will remain subject to the obligation to deliver by way of web harvester.

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

- Option 5 lessens the burden on publishers that would have been placed on them under the previously preferred Option 4 (described on page 9). The default obligation to deliver, for both freely available and access-restricted content, is now by web harvester and there is no obligation to provide background databases, complex files and other costly operating systems via the default web harvesting route. If an on line work cannot be deposited via the harvesting process then it doesn't have to be deposited.
- Unlike Option 2 and Option 3 (described on pages 8-9), Option 5 provides legal protections for copyright and defamation risk in respect of all deposited material. The only exception to this is for instances where on line works cannot be delivered by harvester but the publisher has nevertheless voluntarily deposited the work outside of the terms of the regulations. We expect such circumstances to be relatively limited.
- Option 5 allows for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This will in turn benefit communities of key importance for the UK's future well-being and prosperity: researchers and educators; wealth creators in current and emerging sectors of business and industry; and the scientific community. The nation also benefits from the international renown of the legal deposit libraries and their collections; and from the economic activity generated by the significant numbers of foreign researchers who utilise them.
- Option 5 also offsets the burden of non-print deposit against the burden for depositing printed publications, which may be larger. The impact for each individual publisher might vary but, overall and by the end of the 10-year period, the annual administrative burden in transaction costs of depositing electronic publications should be offset by even greater savings in the existing annual administrative burden for depositing printed publications.
- Although option 5 will not achieve the depositing of all UK on line publications, we consider that it strikes a fair balance between maintaining a strong archive of our cultural heritage and maintaining a proportionate level of burdens on business and civil society organisations. The selection of Option 5 as the consultation preferred option was supported with evidence on the overall costs and benefits to society, and the cost burden that is likely to be imposed on publishing businesses. This is set out in *Table 1* below. The methodology that supports these calculations is explained both in the consultation stage impact assessment and below on pages 11-12 in the current impact assessment.

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

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

Table 1 demonstrates that in relation to the other options considered as set out on pages 7-9, option 5 was the most cost effective means of meeting the policy objectives. These consultation stage figures did not include any period of exemption for micro-businesses.

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

Option 1: Do nothing

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

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

- Whilst some professional (typically large) publishers archive their own material, enquiries by the LDAP showed that the vast majority of UK publishers do not. Therefore a substantial proportion of the UK's cultural and intellectual heritage would be lost forever.
- The relatively small numbers of publishers who archive their material do not usually permit access to the archived copies, except in the case of a system failure affecting their main public offering; or they might make them accessible on a commercial basis in exchange for subscription or payment. Therefore this option is not entirely without cost to legal deposit libraries, universities and other publicly-funded research institutions who subscribe for access by their users, although the overall impact is negligible because so few archives are made accessible in this way. Also, there is no overall systematic or co-ordinated approach; private sector archiving initiatives tend to be arranged individually, with different partner organisations and in different locations, potentially making it difficult for future researchers to know where to find the content. So the benefits to researchers are very limited.

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

- Publishers who currently deposit substantially similar works on paper would not benefit from the cost savings of non-print depositing. Existing legislation does not allow them switch to non-print depositing even where they wish to do so and there is no objection from legal deposit libraries.
- Overall this option does not meet any of the policy objectives – although it would not involve any cost, nor would it achieve any public benefits.

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

23. The second option comprised two elements: permissions-based harvesting by the legal deposit libraries where practical for certain types of material, combined with voluntary schemes in which publishers deposit or provide access for the legal deposit libraries to download copies of other works.

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

- For most websites and some on line publications, the legal deposit libraries can download copies directly from the internet for archiving purposes, but only after first obtaining copyright permission from each rights holder. The need to obtain prior copyright permission is a severe constraint on benefits. It was estimated that with existing resources deposit library staff would only be able to obtain permission successfully for between 700 and 1200 new websites each year. Whilst this would over a 10 year period add between 7000 and 12,000 to an existing 7,142 websites gathered on the British Library / National Library of Wales 'UK Web Archive', these numbers represent only around 0.1% of UK websites, and 99.9% could remain at risk of being lost forever.
- Where permissions-based harvesting is impractical, the legal deposit libraries would need to work with the publishing trade associations to agree and set up voluntary deposit schemes, encouraging individual publishers to deposit or permit the legal deposit libraries to download copies of their publications. If this was offered on a payment or subscription basis, it would not be feasible for the Government or legal deposit libraries to pay for every copy for archiving. This is partly because of the extra cost to the public purse but mainly because, for digital content, payment does not necessarily give the purchaser a right to download, use and keep a copy of the work for preservation—frequently it is in the form of a licence or subscription only allowing access to read, and for a fixed period.
- It would be inevitable that some material, despite being specially selected for its importance and research value, would not be archived because rights holders were unwilling or unable to give permission.
- A court might find that the legal deposit libraries cannot rely upon permissions given by a publisher - for example where a third party rights holder did not give specific permission.
- In respect of works deposited voluntarily (as opposed to being provided under the obligation of regulations), a person who had been defamed in archived material may have cause for claim against a deposit library as its continued availability to readers may perpetuate the defamation.

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

25. The third option comprised of two elements: automated web harvesting under statutory regulation by legal deposit libraries wherever this is practical, but combined with

voluntary schemes for other works in which publishers deposit or provide access for the legal deposit libraries to download copies.

26. Without the need to obtain separate permission in advance from each rights holder, the legal deposit libraries would be able to use more automated processes to take periodic 'snapshots' of many more websites. Acquiring material under the Legal Deposit Libraries Act 2003 also offers legal protections against the risk of defamation claims in respect of archived material.

27. Our main reasons for not selecting Option 3 as the consultation preferred choice were:

- It would exclude almost all professionally published works which are paid for, or which require a subscriber login or some other form of registration, password or access mechanism. A vital part of the UK's digitally published heritage (i.e. that which is of most obvious and immediate benefit in scholarly research) would still not be covered adequately by the regulation.
- For works which were deposited voluntarily outside of the regulations, the same risks on copyright protection and defamation would still exist as under option 2.

Option 4: Statutory regulation, allowing for web harvesting of freely available on line content and, upon request, publisher delivery of access-restricted on line content.

28. In the previous consultation during 2010-11, Option 4 was the preferred option. As in option 3, deposit libraries would harvest any freely available on line content. However, under Option 4 publishers would be statutorily required upon request to make available to the legal deposit libraries any on line content which could not be freely harvested because there was a pay wall or access barrier. The most appropriate method of delivery would be negotiated and agreed between the legal deposit library and the publisher.

29. Our main reasons for not selecting Option 4 as the consultation preferred choice were:

- The requirement to provide non-harvestable content could bring within scope types of material such as databases, for which it was hard to define the cost of delivery. Also, publishers could face repeated *ad hoc* delivery tasks. Therefore, given that the costs to individual publishers could vary significantly, coupled with a lack of feedback on costs during the consultation period and generally negative feedback from publishers, the Government considered that there was not sufficient evidence to show that this option did not impose a disproportionate burden to publishers when depositing non-harvestable content.

Response to the consultation and development of the final preferred option

30. The overall response to the public consultation between February and May 2012 was one of general support for the principle of non-print legal deposit and the majority of respondents were either supportive or acquiescent of the draft regulations, though a number of minor issues and suggested improvements were raised for our consideration.

31. The consultation had included various questions about the impact of the proposed regulations on publishers and deposit libraries, and in particular sought feedback on the accuracy of estimated costs. Specifically, further information was sought on:

- the cost of depositing in print and the potential savings in switching to non-print deposit;
- whether publishers who produce the same works in print and non-print format would seek an agreement to deliver those works in the non-print format rather than the print

- format as currently required, and if so to set out the cost and saving implications;
- the estimated administrative costs for providing relevant login details to allow web harvesting by a deposit library of on line non-print works with access restrictions;
- the cost of delivering on line non-print works by an alternative method of delivery;
- whether deposit libraries agreed that the description of the impact on deposit libraries as set out in the options stage impact assessments was accurate.

32. However we received only a limited amount of feedback in these areas, and in the small number of instances where figures were provided we did not consider that it was possible to assume these figures would be applicable across the sector as a whole. Therefore we considered that there was insufficient basis for revising assumptions and figures in the on line impact assessment, other than the following point on micro-businesses.

33. A number of consultation questions focused on the impact of the proposals on publishers. While these did not yield any significant new evidence to inform our impact assessments, the final stage impact assessments essentially confirm the position that the regulations are a net 'out' in OIOO terms. This position also meets the condition set under the Legal Deposit Libraries Act 2003 that the costs likely to be incurred by publishers must not be disproportionate to the benefit of the public arising from the regulations.

34. At the point of obtaining cabinet clearance to consult, it was agreed that we would propose to proceed with the full set of non-print legal deposit regulations to commence in April 2013 but with micro-businesses exempt from some elements during the moratorium period. This position was reached after production of the consultation stage impact assessment and therefore has a bearing on the impact figures for the final proposal. The figures in the consultation stage impact assessment included calculations of the costs for micro-businesses – these have been taken out for figures in relation to financial year 2013-14 in this final stage impact assessment.

35. Under the cross-government moratorium on new domestic regulation on micro-businesses until April 2014, we are proposing an exemption during 2013-14 for micro-businesses in respect of the non-print legal deposit regulations, except the following measures which place no mandatory burden on publishers:

- regulation 14(1) allowing publishers, if they wish, to switch from providing a deposit library with a print version (the current obligation) to providing a non-print version of the same work;
- regulation 16(1) and 16(2) allowing publishers, if they wish, to choose to send their web-based content to a deposit library;
- regulations 13(3) and 18(3) allowing deposit libraries simply to copy freely available on line work from the internet, which will lead to no cost or obligation on publishers.

36. Over 80% of publishing organisations in the UK are micro-businesses but their output accounts for a smaller percentage of the total deposited publications. It is estimated that 38% of books, 13% of newspapers and 19% of periodicals are published by micro-businesses.

37. Were there to be further delays in the inclusion of micro-businesses under the regulations, there would be a significant growing gap in the preservation of British cultural heritage.

38. Having considered the consultation responses, we have decided to proceed with Option 5 from the consultation stage as the preferred option as our final proposal, subject to the exclusion in financial year 2013-14 of microbusinesses from any elements of regulatory

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

Costs and benefits of the final preferred option

Proportionality

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

Methodology

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

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

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

Assessment of Costs

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

Costs to publishers

48. There are two main costs to publishers in complying with the preferred option: initial transition set up costs associated with adapting IT systems for compatibility; and ongoing running costs that occur as on line works are deposited. These impacts are monetised by assessing the number of businesses affected, combined with unit transition and ongoing costs. This requires an understanding of the number of businesses, publications per business, and the aforementioned unit costs. These are set out below.
49. Number of publishing organisations. The number of publishing organisations, broken down by number of employees and by type of publication (books, newspapers and other periodicals) has been based upon information produced by the ONS in their Activity Size and Location data¹¹.

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

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

50. It must be acknowledged that the figures in this table may exclude other types of organisation such as universities, trade associations, professional bodies or research organisations who also publish as a secondary activity, unless their publishing activity is registered as a separate business. Whilst this means that there may be uncertainty over

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

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

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

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

52. Size of harvesting target. Using data on the number of print publications deposited at the British Library and ONS data in the above table as points of reference, a weighted distribution of the number of book, newspaper or periodical publications issued by organisations of different sizes can be estimated. The output of this calculation is presented in paragraphs 54-56 below to illustrate how the number of publications deposited is expected to grow over the appraisal period.

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

54. By Year 5, approximately 100,000 to 140,000 monographs and serial parts per annum would be harvested or deposited by mutual agreement, processed and archived, representing about 18% to 26% of the potential universe of publications eligible for deposit).

55. By Year 10, approximately 220,000 to 300,000 monographs and serial parts per annum would be harvested or deposited by mutual agreement, processed and archived, representing about 40% to 55% of the potential universe of publications eligible for deposit).

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

Table 4: Costs to publishing businesses

PV Business cost / £m (2009 prices)	Year 1		Year 5		Year 10		Total	
	Low	High	Low	High	Low	High	Low	High
Transaction cost	0.13	0.40	0.28	0.85	0.45	1.34	2.93	8.82
Setup cost	0.12	0.24	0.15	0.30	0.25	0.51	1.93	4.02

Total cost ¹²	0.25	0.64	0.43	1.16	0.69	1.85	4.86	12.84
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57. The overall burden for web harvesting or deposit by mutual agreement is likely to start in the first year at between £0.1m and £0.4m for the transaction costs, increasing in later years as microbusinesses enter the legislation and more publications are deposited. In year 5 the transaction costs would be between £0.3m and £0.9m and in year 10 they should reach a “steady state” of between £0.5m and £1.3m per annum.

58. Publisher setup costs will vary each year, depending upon how many are requested to provide access details for sites behind varying access restrictions, but we estimate that the total of publisher setup costs over the whole of the next ten years will be between £1.9m and £4.0m.

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

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

61. Under the proposed regulations, access to deposited non-print material will be limited to one computer terminal within each deposit library at any one time, and where publishers can demonstrate that access to deposited non-print material would conflict with normal exploitation of the work and prejudice commercial interests, the publisher may request a temporary embargos on access to that material. Overall, the rules for access laid down in regulation, together with embargos will all ensure that legal deposit does not have any harmful impact upon the publisher’s business nor unduly prejudice the publisher’s interests.

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

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

63. Only one publisher provided any figures, which estimated that set up costs would be potentially slightly higher than the current estimate in the impact assessment. However, they believed there would be potentially greater development and testing costs if web harvesting software disregarded permissions files relating to what can be accessed on the targeted website.

64. It is the custom of some website owners and publishers to use robots.txt, ACAP or other conventions and protocols to inform the automated harvesting tools used by web search

¹² Totals may not sum due to rounding.

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

Costs to legal deposit libraries

65. The final preferred option will cause costs to arise in the public sector as well as imposing a cost on business. Similarly to businesses, there are two types of costs to legal deposit libraries associated with harvesting. There are initial set up costs associated with building the harvesting system, and there are ongoing costs associated with running and maintenance of the system to collect on line publications. The British Library has provided detailed cost estimates for the proposal. These are detailed below.
66. System setup costs. Construction and installation of the system is estimated by the British Library (who ran estimates past the LDAP) to cost between £0.7m and £1.0m in constant prices for the first three years of operation. These costs comprise of systems development project costs such as programming the harvester to take content from behind paywalls, and setting up systems for operating access restrictions within the legal deposit libraries. The system is expected to be fully operational from year 1 of the scheme, but continued investment will be required as capacity expands rapidly to meet future demand. The total present value of these transitional costs is therefore in the range of £2.1m and £2.9m over the appraisal period.
67. Costs of on going harvesting and archiving. The deposit libraries plan to copy relevant UK publications from the open web for archiving, by means of an automated web harvester. This will include archiving all UK websites on a regular, annual basis—akin to taking landscape ‘snapshot’ photographs of the whole UK domain. As the UK domain consists of many millions of websites, this is a substantial exercise which it is thought will only be affordable on the basis of a highly automated process once or twice a year.
68. The harvesting software will be programmed to identify and take a copy of relevant websites and materials, in accordance with the regulations and technical processes that the Government set out for consultation. Quality assurance will be carried out, to ensure that relevant websites and material have been recorded properly and can be viewed successfully, and that no out of scope material is archived. This will be done with automated systems and tools wherever possible, and on a sampling basis for most of the material being archived.
69. However the material in some websites changes more rapidly than twice a year, for example in response to significant events or themes, and would need additional archiving ‘snapshots’. Certain other websites might be of particular interest to future researchers, meriting additional quality assurance to ensure that these, in particular, have been properly archived. Curators will be needed to satisfy these requirements by identifying and selecting appropriate websites, by programming the harvesting software to visit the website and record new material at appropriate intervals (perhaps monthly, weekly, daily or even hourly), by carrying out additional quality checks and perhaps by adding extra descriptive metadata and catalogue information about the content. In contrast to the wide-angle landscape snapshots of the whole UK domain, this may be likened to zooming in for additional time-lapse photography of particular subjects.

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

Table 5: ongoing harvesting and archiving costs for legal deposit libraries

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

74. Web harvesting costs are based on the labour costs associated with curatorial selection and the acquisition of permissions, both in the British Library and other legal deposit libraries. They also take account of information storage costs associated with the archiving process. Both of these costs increase over the period as Table 4 demonstrates, accounting for increased levels of activity as the scheme expands. The labour costs of web harvesting have been calculated on the basis of an assumption about the number of full time equivalent (FTE) staff members at different pay scale grades that will be required to perform the necessary tasks, combined with an average salary cost for the British Library for each different pay scale grade. The information storage costs are based on units of information that will be acquired, based on number of UK registered domains, websites harvested, and the average size of each harvest. This information is combined with a standard cost per terabyte of £776, which declines at a rate of 20% per annum to

reflect the trend for disk storage space. A sensitivity of -10%/+25% has been applied to all costs estimates to create the range presented.

75. E-publication costs are based on the labour costs associated with acquisition, claims, and liaison with publishers, along with validation and metadata processing, both in the British Library and other legal deposit libraries. They also take account of information storage costs associated with the archiving process. Both of these costs increase over the period as Table 4 demonstrates, accounting for increased levels of activity as the scheme expands. The labour costs of web harvesting have been calculated on the basis of an assumption about the number of full time equivalent (FTE) staff members at different pay scale grades that will be required to perform the necessary tasks, combined with an average salary cost for the British Library for each different pay scale grade. The information storage costs are based on units of information that will be acquired, based on number of publications submitted, and the average size of each publication. This information is combined with a standard cost per terabyte of £776, which declines at a rate of 20% per annum to reflect the trend for disk storage space. A sensitivity of -10%/+25% has been applied to all costs estimates to create the range presented.
76. Infrastructure maintenance costs take account of preservation, security, discovery, and access functions. These costs have been estimated on the basis of an assumption about the number of full time equivalent (FTE) staff members at different pay scale grades that will be required to perform the necessary tasks, combined with an average salary cost for the British Library for each different pay scale grade. Estimates of system upgrades have also been included. A sensitivity of -10%/+25% has been applied to the initial estimate to create the range.
77. Potential impact on other free-to-access sites. For websites and other material that the publisher makes available for open access, i.e. without restriction, many if not most publishers might be content to permit the legal deposit libraries to make the archived (harvested) copies available on the same basis. However some publishers provide open access to their content for commercial reasons, such as to support advertising or to encourage traffic and interest in other paid for publications. Allowing open and unrestricted access to archived copies of their material might cause a loss of web traffic to the publishers' own websites, unduly prejudicing their legitimate commercial interests.
78. Therefore all material archived through legal deposit may only be used in ways that are permitted by the 2003 Act and through regulations. An important limitation built into the 2003 Act, by virtue of its definition of a reader in section 7, is that archived copies may only be used by authorised readers on the (physical) premises of the legal deposit libraries—they not be made available remotely or on line. Furthermore, regulation will put in place rules which emulate the de facto limitations in use of printed works:
- Each deposited work may only be viewed by authorised readers at one terminal at a time in each deposit library.
 - The works must be secured to prevent any unauthorised copying.
 - The legal deposit libraries may make copies for specified purposes under the regulations such as preservation, but not in order to increase access.

Assessment of benefits

79. There are a number of benefits that are anticipated as a result of the preferred final option. Publishers are expected to enjoy efficiencies from the option to submit publications in non-print format that would otherwise have had to be submitted in print form. These savings are monetised. There are a number of benefits for the legal deposit

libraries, and wider society. It is difficult to monetise these impacts, but there are discussed qualitatively.

Benefits to publishers

80. Publishers will benefit from the new regulations as they will no longer need to submit hard copies of publications which are substantially the same as a non-print version and therefore have the potential to make efficiency savings. The total saving to publishers (with a one-year lag before benefits begin to be realised) is estimated to be £0.6m-£0.9m in Year 2, rising to £123m-£1.7m in Year 5, and £1.9m to £2.6m in Year 10 as micro businesses enter the regulation and the number of publications submitted increases. Total savings across the appraisal period are estimated to be in the range of £11.8m and £16.5m. These estimates have been created using the following methodology.

81. In 2005 an estimate was made of the admin burden placed on publishers of hard-copy legal deposit which was in the region of £53m. This figure of £53m produced by PWC, was part of a wider exercise to give an indication of the costs that Government places on businesses, not to produce statistically accurate data for each regulation. The Standard Cost Model was used, which works on a relatively simple methodology, by measuring the cost (in terms of the time it takes to complete and any external costs) of completing one transaction and then multiplying it by the number of times it happens. These costs were established through interviews with publishers. It is not clear if these figures include the cost of the publications themselves. Therefore we recognise that £53m was not likely to be a fully accurate figure. We believe it tended to overestimate the true administrative burden and therefore, for the purpose of calculating the savings as a benefit, we have adopted a very cautious approach and assumed just £10.6m (i.e. 20% of £53m) as the total cost of hard-copy deposit; a conservative assumption is supported by the results of a brief survey undertaken in July 2011 by DCMS which also indicated that £53m is likely to be too high.

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

83. To calculate the saving, £10.6m must be divided by the number of printed book titles, newspaper editions and serial issues that are published in the UK each year. This averages 537,096 per annum, based upon statistics for three years of legal deposit receipts as reported by the British Library. Therefore the administrative burden for depositing up to six copies of a printed publication is £19.74. This compares with a transaction cost of between £3.00 and £6.50 for depositing one copy – which the legal deposit libraries would then share – of the same publication in non-print form.

84. We have then made three further assumptions with guidance from the British Library to ensure realistic and conservative calculation of the overall year-on-year savings:

- Firstly we assume a one-year lag before realising any saving, because of the need for a period of transition and testing to ensure that the electronic system is working properly before deliveries of the printed copies can stop.
- Secondly, consistent with the rest of the Impact Assessment for our preferred option, we assume that, in practice, only between 40% and 55% (50% average) of the relevant publications in non-print form can be successfully harvested by the legal

deposit libraries or will be deposited by mutual agreement. Although the proposed regulations require the publisher to provide a means of access for the libraries' harvester, we anticipate that, for approximately 50% of titles, the libraries will encounter other technical issues or difficulties in harvesting which the publisher is under no obligation to help them resolve.

- Thirdly we assume that 75% of non-print publications that will be web-harvested or deposited by publishers are also published in print form. This is a higher proportion than we assumed in the earlier impact assessment for Option 4, because those publishers who do agree to deposit will typically do so because they can save the cost of hard-copy deposit – so the weight of hard-copy benefits is much more likely to be contained within the 50% of publications that are deposited or harvested than in the 50% that are not.

85. These savings to businesses can be directly offset against the costs to businesses identified previously, because the ability of publishers to deposit works on line that they would otherwise have had to deposit in print is a function of the installation and maintenance of systems to allow for the harvesting of on line material. The net impact on business is therefore an important consideration and is discussed in the conclusions below.

86. In certain cases, there may be additional savings to publishers in that legal deposit libraries can carry out archiving activities on their behalf. The costs of individual archives and the benefits of alternative provision are likely to vary significantly amongst publishers, and we have not attempted to quantify these benefits.

Benefits to legal deposit libraries

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

Benefits to research and scholarship

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

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

Benefits to the UK

90. Extension of legal deposit will allow for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This in turn will benefit communities in the UK of key importance for its future well-being and prosperity: researchers and educators; wealth creators in current and emerging sectors of business and industry; and the scientific community. The nation also benefits from the international renown of the British Library and the legal deposit libraries and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them. A non-print legal deposit scheme will also allow the UK to keep pace with other countries; many of whom already have non-print legal deposit schemes in place. *Table 6* below lists countries that have already taken this step.

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

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

Aggregate impact of costs and benefits

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

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

Present value costs	Total Cost	...of which to Publishers	...of which to Libraries
Low	30.4	4.9	25.5
High	48.3	12.8	35.4
Best Estimate	39.3	8.9	30.5
Present value benefits	Total Benefit	...of which to Publishers	...of which to Libraries
Low	11.8	11.8	0.0
High	16.5	16.5	0.0
Best Estimate	14.1	14.1	0.0
Net present value¹³	Total NPV	...of which to Publishers	...of which to Libraries
High	-18.5	-7.0	-25.5
Low	-31.8	-3.6	-35.4
Best Estimate	-25.2	-5.3	-30.5

¹³ Totals may not sum due to rounding.

92. The overall NPV of the final preferred policy option is £-25.2m, within a range of £-18.5m-£-31.8.9m. This indicates that the policy is overall a net cost to society. This estimate only takes account of monetised impacts, and therefore does not take account of the wider benefits around published heritage for which it is only feasible to provide a qualitative benefit assessment.
93. This position is predominantly driven by net costs that accrue to the public sector, in the form of legal deposit libraries that have to implement systems to collect and maintain on line content. This NPV for the public sector is estimated to be £-30.5m, within a range of £-25.5m-£-35.4m.
94. There is also a cost burden imposed on publishing businesses, but this is outweighed by benefits that also accrue to businesses as a result of the policy intervention. The business NPV is estimated to be £5.3m, in the range of £3.6m-£7.0m.
95. The business NPV is a measure of the burden that is imposed on business as a result of a regulatory intervention. The primary measure of the burden that is imposed on business, however, the Equivalent Annual Net Cost to Business (EANCB). This is equivalent to the undiscounted flow of costs and benefits to business divided by the annuity rate. This is estimated to be £-0.8m, within a range of £-0.6m-£-1.1m. The negative nature of the EANCB indicates that the proposal is a regulatory “OUT” – it reduces the regulatory burden that government imposes on businesses. This makes intuitive sense: while there are aspects of the proposal that are a regulatory “IN” (from compliance with the deposit of on line materials), there are a greater weight of regulatory “OUT” (from facilitating easier compliance with existing deposit commitments). Given that these two aspects of the proposal are interlinked since they are both based on publisher implementation of IT systems, it is appropriate to consider both effects together as an overall regulatory “OUT”.
96. The policy proposal excludes micro businesses in financial year 2013-14 from all aspects of regulation that directly impose a cost on business, and this is reflected in the assessment of impacts presented above. Analysis of micro businesses alone supports this decision. The lower publication rate of micro businesses means that their recovery of initial setup costs and transaction costs from digital deposit of print publications is much slower than for larger businesses. Across a ten year appraisal period, therefore, the potential business benefits from the preferred option do not outweigh the costs of increased legal deposit obligations. For microbusinesses alone the EANCB is estimated to be £0.1m, within a range of £-0.0-£0.2m. The policy proposal would therefore represent an IN for microbusinesses in the best estimate, although in the low scenario a very small net benefit OUT is possible. This assessment is consistent with their exclusion from the policy proposal during the moratorium period.
97. The EANCB for micro-businesses depositing on line content is estimated to be £0.1m (see ‘Aggregate impact of costs and benefits’ section below). This figure divided by the 4,346 UK publishers classified as micro-businesses (see Table 2 below) indicates a best estimate of the EANCB per micro-business depositing on line content as £27. This metric indicates that when micro-businesses do enter into the legislative framework following the moratorium, each business will on average only bear a very small cost.

Risks and assumptions

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

99. However, for Option 2, Option 3 and Option 4 at consultation stage there was also an additional major risk for any voluntary option: the lack of statutory protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel. A person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. For example the complainant might have obtained a decision (whether via the court or by a separate settlement with the publisher) for all copies to be withdrawn or for an apology or retraction to be published, but the archived copy remains as first published. Under case law (*Loutchansky v Times Newspapers Ltd and Others No 2*) it may be argued that creating a temporary screen copy of a digital work, which happens each time that a person accesses a digital work, constitutes a form of re-publishing and therefore the deposit library might arguably be creating a new defamation. The legal deposit libraries will put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. However such procedures would typically depend upon the legal deposit libraries being made aware of the defamation by the original publisher, who might also therefore bear some responsibility if there is any failure in communications. These risks are resolved through the selection of option 5 as the chosen final option.

Description of implementation plan

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

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

Specific Impact Tests

Economic and financial

102. The economic and financial implications of the policy proposal have been dealt with in terms of costs to legal deposit libraries and costs and benefits to publishing businesses. Further economic and financial impacts are not anticipated. Competition impacts, in particular, are not expected to arise. Businesses benefit overall from the proposal. As paragraph 97 outlines, microbusinesses could potentially suffer a small financial disadvantage under the proposal, but will be exempt from new burdens in financial year 2013-14. The EANCB that has been estimated at £0.9m is, however, very small compared to the aggregate size of the publishing industry which is estimated in official statistics to be worth approximately £11.6bn per annum in gross value added terms¹⁴. The proposal is therefore expected to have no material effect on competition within the publishing market.

Social

103. Social impacts around the benefits of maintaining published heritage for society in terms of legal deposit libraries, research and scholarship, and wider UK benefits have been discussed

¹⁴ DCMS (2011), Creative Industries Economic Estimates, London

qualitatively. It is not anticipated that there are further social impacts, and certainly no detrimental effects on age, gender, ethnic background, or the rural environment.

Environmental

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

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

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as One-Out?
£0.32m	£0.13m	£0.01m	YES	IN

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

What are the policy objectives and the intended effects?
The objective is to allow the preservation of non-print publications the material for future generations. The regulations under the 2003 Act will extend legal deposit to include off line content, and on line content that can be obtained through a harvesting process. They also cover on line content that is substantially the same as a printed work, removing the need to deposit print and reducing the costs to the publishing sector. Separate impact assessments have been prepared for the off line and on line elements of the regulations. This impact assessment is only for off line content. Where there is a small net cost in the off line impact assessment, this is offset by a larger net benefit in the on line impact assessment (DCMS006).

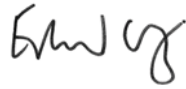
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
1. Do nothing – leave archiving responsibility to the market.
2. Statutory regulation (preferred option) – under the framework of the Legal Deposit Libraries Act 2003, regulations would oblige publishers to deposit, free of charge, one copy of their off line publications with the British Library and upon request, up to five additional copies for the remaining legal deposit libraries, on the same basis as the legal deposit of printed publications under the 2003 Act. This option meets the policy objective whilst only imposing a minimal burden on publishing businesses.

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

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

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

Signed by the responsible Minister:



Date: 26/6/12

Summary: Analysis & Evidence

Preferred Policy Option

Description:

FULL ECONOMIC ASSESSMENT

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

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	0	0.03	0.23
High	NA		0.05	0.41
Best Estimate	NA		0.04	0.32

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

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

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

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	0	0.00	0.00
High	NA		0.00	0.00
Best Estimate	NA		0.00	0.00

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

No monetised benefits are identified.

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

Libraries will be able to harvest systematically, producing a single archive of the nation's off line published heritage for the benefit of researchers and future generations. Up to 100% of freely accessible websites and publications, plus 100% of other publications could be archived. The Evidence Base sets out a full qualitative discussion of the benefits that could accrue to society from these impacts.

Key assumptions/sensitivities/risks	Discount rate (%)	3.50%
In respect of works deposited or collected under the new regulations, Section 8 of the 2003 Act provides the legal deposit libraries with protection against infringement of copyright and database rights. Section 9 protects publishers against infringement of copyright, publication or database rights and any claim for breach of contract, in respect of deposited copies. Section 10 dramatically reduces risk of liability for any defamation claims in respect of archived copies. Micro businesses are exempt from any obligations regarding off line publications in the regulations in financial year 2013-14 only.		

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base

Policy Background

1. The UK's legal deposit system has evolved over the centuries but can be traced back to statutes for England and Wales in 1662 and for the whole United Kingdom in 1710. The current Legal Deposit Libraries Act 2003 obliges publishers to deposit, at their own cost, one copy of every printed publication that is published or distributed in the UK with the British Library and upon request, with up to five other libraries. Hereinafter these are referred to as the "legal deposit libraries":
 - British Library ("BL")
 - Bodleian Library, Oxford ("Bodleian")
 - University Library, Cambridge ("CUL")
 - Library of Trinity College, Dublin ("TCD")
 - National Library of Wales ("NLW")
 - National Library of Scotland ("NLS").¹
2. The Legal Deposit Libraries Act 2003 extends existing legal deposit provisions for printed material to cover non-print works. The 2003 Act gives the Secretary of State for Culture, Olympics, Media and Sport ("Secretary of State") the powers to make secondary legislation bringing new and emerging publishing media under its scope. Such regulations must be approved by the affirmative resolution of each House of Parliament and may not be made unless the legal deposit libraries and publishers likely to be affected have been consulted. The Secretary of State must also be satisfied that the regulations do not unreasonably prejudice the interests of persons who publish works to which the regulations relate and there are not disproportionate costs to publishers.

Problem under consideration

3. A statutory legal deposit system has existed in the UK for more than 300 years for printed works. However resources of information and creative expression are increasingly being produced, distributed, accessed and maintained in non-print form. The majority of non-print works are made available on line. On line media includes the delivery of non-print works through, for example, a publisher's own website, e-books distributed via on line businesses such as Overdrive, or via aggregators such as Google News. A more limited amount of non-print publications such as encyclopaedias may be ordered off line, generally as DVDs, and other off line publications may be e-mailed to subscribers as opposed to being directly downloaded from a website. Without appropriate legal, technical and institutional frameworks to secure the protection of this non-print heritage, it is at risk of being lost forever.
4. This risk is recognised by the research community and by many publishers, especially those producing publications of scholarly or historical interest. It is also common to most nations and governments; for example on 15 October 2003 the UNESCO member states adopted a Charter on the Preservation of the Digital Heritage and there are, or have been, initiatives in many countries to extend the legal deposit system to include non-print (digital) publications. This Impact Assessment puts forward a proposal for addressing non-print legal deposit in the UK, in relation to non-print (digital) content which is made available to the public for viewing off line.

¹ The Act also confers rights for access to legal works deposited with NLS upon the Library of the Faculty of Advocates ("FoA")

5. In 2005, the Department for Culture Media and Sport (DCMS) set up the Legal Deposit Advisory Panel (LDAP) 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 LDAP submitted their recommendations for a self-regulated voluntary scheme, with active requesting by legal deposit libraries, in relation to non-print publications in microform and off line electronic media and UK on line publications, which are available free of charge and without access restrictions. A public consultation exercise was undertaken at the end of 2009 on the Panel's recommendations.² In Spring 2010 LDAP submitted recommendations on UK commercial and protected on line publications. This led to a second consultation³, but the Government that on the basis of feedback from publishers we had insufficient evidence that the proposals were not overly burdensome. Our new consultation in February to May 2012⁴ revises the earlier proposals to place a lower burden on businesses. This impact assessment explains the process of arriving at a final preferred option for government intervention, and analyses the likely impact of this option on relevant stakeholders.

Rationale for intervention

6. The disappearance of published heritage in whatever form constitutes a loss of value and nations aim to maintain, increase and diffuse knowledge by assuring the conservation and protection of their documentary inheritance of books, papers, works of art and monuments of history and science.
7. Heritage in this form is a positive externality as it produces a number of "external" social benefits that exceed the "private" benefits that any individual would take into consideration when taking a costly market decision on archiving works. These benefits include improvements in mental wellbeing, education, and local/national identity. Further benefits include 'bequest value' that stems from preserving the heritage for future generations. The fact that these, often considerable benefits, are not taken account of in any free market decision on the archiving of works means that from the perspective of society there will be a tendency to systematically undersupply these materials.
8. For printed (non-digital) publications this externality is normally corrected by national libraries and archives, sometimes together with selected research libraries, systematically building and preserving a comprehensive collection of their nation's published output. Typically this activity is supported by a legal framework which requires publishers, at their own cost, to deposit a copy of each work with the specified library or libraries – an arrangement known as "legal deposit". This helps to ensure there is a single archive, overcoming potential coordination issues within a large and diverse sector. The benefit of published heritage can be found in a study commissioned by the British Library, which found the total value each year of the British Library to the UK economy was £363m, with £59m going directly to users of the services and £304m to wider society⁵.
9. Non-print works are increasingly becoming a feature of everyday life, and fulfil equivalent functions of information dissemination to the more traditional forms of print works. The majority of these non-print works are available on line. A more limited amount of non-print works such as encyclopaedias on DVDs may be ordered off line, and other off line works may be emailed to subscribers as opposed to being directly accessed or downloaded

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

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

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

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

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

Policy objectives

10. Given the problem under consideration and the rationale for intervention set out above, government action should have several policy objectives:
 - f. To ensure a national archive of non-print publications.
 - g. To enable an efficient system in which material is archived and preserved in the legal deposit libraries.
 - h. To govern how the deposited copies may be used, balancing the needs of libraries and researchers with the interests of publishers and rights holders.
 - i. To facilitate long-term preservation, so that the material may continue to be used in future.
 - j. To ensure long term viability by requiring both legal deposit libraries and publishers to share part of the responsibility for archiving without imposing an unreasonable burden on any institution.
11. The proposal for the legal deposit of off line publications discussed in this impact assessment is one part of a linked proposal. Proposals for the legal deposit of on line publications go hand in hand with this proposal and provide an overall impact taking in the context of the wider policy area. In line with advice from the Regulatory Policy Committee, we have produced separate impact assessments for off line and on line publications, and this impact assessment for off line publications should be viewed alongside the impact assessment for on line publications⁶.

Options considered

12. This impact assessment deals with the final preferred policy option that is intended to be taken forward as proposed legislation. The process of arriving at this final preferred policy option is nevertheless important. This option has developed from the process of public consultation.
13. Following on from two previous public consultations noted in paragraph 5⁷, the DCMS ran a new consultation between February and May 2012.⁸ This consultation ran along broadly similar lines to the earlier two, but included several significant amendments to ensure that burdens on business (which had previously been considered to be too great for the regulations to proceed further) were reduced, as well as including further clarifications on the scope of the regulations. A significant change (discussed later on in this impact assessment) was that micro-businesses were exempt from certain aspects of the regulations under a moratorium lasting until April 2014.
14. Our preferred option presented in the 2012 consultation was option 4 (*Statutory regulation under the framework of the Legal Deposit Libraries Act 2003*)
15. This option would oblige publishers to deposit, free of charge, one copy of their off line publications with the British Library and upon request, up to five additional copies for the

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

⁷

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

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

⁸ <http://www.culture.gov.uk/consultations/8878.aspx>

remaining legal deposit libraries, on the same basis as the legal deposit of printed publications under the 2003 Act.

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

- Statutory depositing of off line material is the most beneficial of the four options in maintaining the policy objectives set out in paragraph 10 and would do more than options 1 to 3 (summarised on pages 29-31) to achieve a comparable scheme to print publications, reducing the risk of a 'digital black hole' in our national records and archives. It will entitle deposit libraries to receive non-print off line publications, rather than according to whether or not the publisher is willing to deposit it.
- Statutory depositing would provide protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel.
- Although publishers will be required in some cases to deposit publications which they might otherwise have chosen not to deposit, the effect on publishers has been limited in the regulations through the inclusion of clauses to request temporary embargoes against availability of the work at legal deposit libraries, and restrictions on the accessing and use of deposited works.

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

Table 1: Consultation stage impact assessment

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

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

Option 1: Rely on publisher archiving

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

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

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

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

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

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

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

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

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

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

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

- The current system in place (Option 3 below) does not place any formal obligations on publishers to deposit publications if they do not wish to do so. From the perspective of Government policy on legal deposit there is no benefit in moving to a less comprehensive scheme, and for publishers any such deregulatory change would be limited in impact.

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

23. This option is currently in place and is therefore the baseline “do nothing” option. This option enhances the code of practice for voluntary deposit of microform off line publications in Option 2 by establishing a formal, lasting agreement and governance structure. This would include memoranda of understanding signed by the legal deposit libraries and publishers, a monitoring and annual reporting scheme, and five-yearly reviews both of the effectiveness of the scheme and of the trend in the number of relevant publications. Publishers would be actively encouraged to deposit by their Trade Association representatives; the legal deposit libraries would actively identify relevant publications and request deposit when necessary.

24. Our main reasons for not selecting Option 3 as the preferred choice were:

- This option does not help resolve the issue of a growing gap in the comprehensiveness of our archives and records of the UK’s intellectual and scientific achievements. Publishers would not be legally obliged to deposit any further works than they currently choose to, and recommendations in annual reports on the scheme would not carry any legal powers.
- We do not consider that this option would in the long term meet our obligations under the UNESCO Charter on the Preservation of the Digital Heritage.
- As in Option 1 and Option 2, there would be no legal basis on which researchers could obtain access to the publications if publishers did not wish to deposit it or create and maintain accessible private archives.
- As in Option 1 and Option 2, this approach does not give the legal protections against infringements and liabilities.

Response to the consultation and development of the final preferred option

25. The overall response to the public consultation between February and May 2012 was one of general support for the principle of non-print legal deposit and the majority of respondents were either supportive or acquiescent of the draft regulations. In the consultation responses there was only very limited feedback on issues related to off line depositing only, and we do not consider that sufficient information was received to prompt any change to the policy option preferred at consultation stage.

26. The consultation had included various questions about the impact of the proposed regulations on publishers and deposit libraries, and in particular sought feedback on the accuracy of estimated costs. Specifically, further information was sought on:

- The cost of depositing in print and the potential savings in switching to non-print deposit.
- Whether publishers who produce the same works in print and non-print format would seek an agreement to deliver those works in the non-print format rather than the print format as currently required, and if so to set out the cost and saving implications.
- The estimated administrative costs for providing relevant login details to allow web harvesting by a deposit library of on line non-print works with access restrictions.

- The cost of delivering on line non-print works by an alternative method of delivery.
 - Whether deposit libraries agreed that the description of the impact on deposit libraries as set out in the options stage impact assessments was accurate.
27. However we received only a very limited amount of feedback in these areas, to the extent that we considered that there was insufficient basis for revising assumptions and figures in the off line impact assessment, other than the following point on micro businesses.
28. A number of consultation questions focused on the impact of the proposals on publishers. While these did not yield any significant new evidence to inform our impact assessments, the final stage impact assessments essentially confirm the position that the on line and off line regulations together are a net “OUT” in “One-In-One-Out” terms, although the off line component of the regulations represents a small “IN”.
29. At the point of obtaining cabinet clearance to consult, it was agreed that we would propose to proceed with the full set of non-print legal deposit regulations to commence in April 2013 but with micro-businesses exempt from some elements during the moratorium period, including any obligations in relation to depositing off line material. This position was reached after production of the consultation stage impact assessment and therefore has a bearing on the impact figures for the final proposal. The figures in the consultation stage impact assessment included calculations of the costs for micro-businesses – these have been taken out of the calculation for financial year 2013-14 only in this final stage impact assessment.
30. Under the cross-government moratorium on new domestic regulation on micro-businesses until April 2014, we are proposing an exemption during 2013-14 for micro-businesses in respect of the non-print legal deposit regulations, except the following measures which place no mandatory burden on publishers:
- regulation 14(1) allowing publishers, if they wish, to switch from providing a deposit library with a print version (the current obligation) to providing a non-print version of the same work;
 - regulation 16(1) and 16(2) allowing publishers, if they wish, to choose to send their web-based content to a deposit library;
 - regulations 13(3) and 18(3) allowing deposit libraries simply to copy freely available on line work from the internet, which will lead to no cost or obligation on publishers.
31. Therefore micro businesses are fully exempt in 2013-14 from depositing any off line content on a statutory basis. Where they do deposit on a voluntary basis, there would be a lack of statutory protection against third party copyright infringement, licence infringement, and other potential legal liability such as defamation and libel, unless the off line publication was being deposited in agreement with the deposit library as an alternative to a substantially similar print publication.
32. Over 80% of publishing organisations in the UK are micro-businesses but their output accounts for a smaller percentage of the total deposited publications. It is estimated that 38% of books, 13% of newspapers and 19% of periodicals are published by micro-businesses.
33. The best estimate of the total cost to publishers of depositing off line content is approximately £13k per annum (see ‘Aggregate impact of costs and benefits’ section below). The source data used for this calculation does not allow us to break down the costs for businesses of different sizes but if this figure were to be spread evenly across

the 5,234 UK publishers (see Table 3 below) the resulting Equivalent Annual Net Cost to Business (EANCB) per micro-business depositing off line content would be as little as £2.50.

34. Were there to be further delays in the inclusion of micro-businesses under the regulations, there would be a significant growing gap in the preservation of British cultural heritage.
35. Having considered the consultation responses, we have decided to proceed with Option 4 from the consultation stage as the preferred option for our final proposal, subject to the exclusion of microbusinesses in 2013-14 from any elements of regulatory burden that are implied. This refined option represents the final preferred option, and **therefore we have now proceeded to a final proposal stage impact assessment**. The following section presents an appraisal of the final preferred option, following the methodology set out the most recent consultation document, but making adjustments as appropriate to take account of the fact micro businesses are now excluded in 2013-14 from all aspects of the proposed regulation that could potentially impose a mandatory burden.

Costs and benefits of the final preferred option

Proportionality

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

Methodology

39. The costs and benefits of depositing off line content for legal deposit libraries and publishers have been expressed in financial terms following the standard cross-government 'one-in-one-out' criteria. For publishers there are quantifiable costs involved

in the processing and return of off line items, while for legal deposit libraries there are costs associated with curatorial, archiving and storage activities.

40. Our assessments have focused highly on the effect on business. This is partly because previous consultations were considered overly burdensome (and the policy could not proceed on that basis), and partly because of the increased need to protect businesses in the current difficult financial climate. Our figures exclude costs to micro businesses in 2013-14 as they are exempt from any obligations that year under the proposed regulations.
41. We have provided qualitative feedback on the benefits to society, as these are difficult to quantify in a meaningful way with reference to the existing research on the benefits of maintaining published heritage. The legal deposit scheme is primarily of benefit as a historical research tool and in terms of the benefit to society of a shared cultural heritage. A fit for purpose legal deposit scheme is also part of our international commitments and reputation. Therefore the true value of this scheme can only be properly assessed by future generations.
42. The methodology used to appraise the final preferred option is identical to the methodology presented in the consultation stage impact assessments. The results of the analysis for the final preferred option do, of course, differ from consultation Option 4 due to the exclusion of microbusinesses in 2013-14. The adjustment to take account of microbusinesses has been made in all relevant cases on the basis of Office for National Statistics (ONS) and British Library data on the number of publishers and publications per publisher, split by size and primary function of business. The data is described in *Table 2* and *Table 3* below. Taking a weighted index of these two data sets combined gives an indication of the proportion of deposits that are likely to be made by micro businesses. This proportion is equal to 22%, and an equivalent adjustment is made to the consultation stage assessment to present an accurate assessment of the policy impact of the final preferred option.

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

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

Table 3: Number of businesses by size and type of publication

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

43. The impact assessment presents costs and benefits in present values, unless otherwise specified, discounted at the Green Book guidance rate of 3.50% per annum. The appraisal period is set at the Green Book guidance length of ten years.

Assessment of cost impact on publishers

44. The number of additional off line works which will be deposited under this scheme are expected to be very limited given that IT formats such as DVD-ROMs have become increasingly replaced by access to on line publications, and various publishers already deposit off line works on a voluntary basis. Based on British Library data, produced in consultation with other legal deposit libraries we estimate that after the moratorium ends, 2,100 additional publications would be deposited per annum under this scheme. The application of the moratorium on inclusion of micro-businesses reduces the amount of off line publications deposited through the scheme by 22% in 2013-14, as previously explained in paragraph 42. Given the extremely small volume of publications, we expect the overall cost to publishers to be minimal.

45. Costs have been assessed by applying a range of cost estimates to the number of additional publications that are anticipated, derived from LDAP recommendations. The low estimate of cost is £2 per item, while the high estimate of cost is £12 per item. These costs reflect the administrative burden of selecting, submitting, packaging, and transporting off line works to legal deposit libraries. These cost estimates therefore include both labour costs and any materials costs associated with compliance. Question 19 of the consultation questionnaire asked publishers how much it would cost to deliver off line non-print works to a deposit library, whether they currently participate in a voluntary scheme for depositing off line non-print works and if so how the cost of depositing would differ under the regulations. The only response to this question, from a trade association, provided no figures for the cost of depositing off line non-print works such as CD-ROMs, but imagined them to be similar in scale to the figures set out in their answer to the costs of depositing print copies. They noted that many of their members already participate in the voluntary agreement for off line deposit. Applying these costs results in an annual constant prices cost of between £4,261 and £25,564 per annum, although these costs are adjusted down in the first appraisal year to take account of the microbusiness exemption.

46. To ensure that the impact on publishers' business models is kept to a minimum, and that no further costs are incurred by businesses, the regulations include some general provisions about embargoes. These are intended to protect the commercial interests of those publishers who may be unreasonably prejudiced if readers are allowed access to their works in a legal deposit library, albeit on the limited basis prescribed under the draft regulations. Although the possibility of an embargo does not remove the obligation to deposit the publication with a legal deposit library, readers will not be given access for a specified period of time. Further protections for the intellectual property of businesses are conferred by ensuring that:

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

Assessment of cost impact on legal deposit libraries

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

Assessment of wider benefits from legal deposit

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

Benefits to legal deposit libraries

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

Benefits to research and scholarship

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

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

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

Benefits to the UK

52. Extension of legal deposit will allow for the maintenance of a comprehensive archive and record of the UK's intellectual and scientific achievement. This in turn will benefit communities in the UK of key importance for its future well-being and prosperity: researchers and educators; wealth creators in current and emerging sectors of business and industry; and the scientific community. The nation also benefits from the international renown of the British Library and the legal deposit libraries and their collections, and from the economic activity generated by the significant number of foreign researchers who utilise them. A non-print legal deposit scheme will also allow the UK to keep pace with other countries; many of whom already have non-print legal deposit schemes in place. *Table 4* below lists countries that have already taken this step.

Table 4: List of countries that have non-print legal deposit schemes in place

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

Aggregate impact of costs and benefits

53. Having set out and assessed, monetising wherever possible, a number of different impacts on both the cost and benefit side that are likely to result from implementation of the preferred policy option, it is necessary to examine the overall position of the preferred policy option. This is set out in *Table 5* below, which takes the midpoint of ranges presented in the previous analytical sections as the central estimate, and rounds the results of the analysis to two decimal places.

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

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

54. The overall NPV of the final preferred policy option is £-0.32m, within a range of £-0.23m-£-0.41m. This indicates that the policy is a net cost to society. This estimate only takes

¹² Totals may not sum due to rounding.

account of monetised impacts, and therefore does not take account of the wider benefits around published heritage for which it is only feasible to provide a qualitative benefit assessment.

55. This position is predominantly driven by net costs that accrue to the public sector, in the form of Legal Deposit Libraries that have to implement systems to collect and maintain off line content. This NPV for the public sector is estimated to be £-0.20m.
56. There is also a small cost burden imposed on publishing businesses. The business NPV is estimated to be £-0.13m, in the range of £-0.04m-£0.21m.
57. The business NPV is a measure of the burden that is imposed on business as a result of a regulatory intervention. The primary measure of the burden that is imposed on business, however, the EANCB. This is equivalent to the undiscounted flow of costs and benefits to business divided by the annuity rate. This is estimated to be £0.01m, within a range of £0.00m-£0.02m. The negative nature of the EANCB indicates that the proposal is a regulatory “IN” – it increases the regulatory burden that government imposes on businesses. This makes intuitive sense: costs are imposed on businesses as they comply with the requirement to submit off line works, and there is no counterpoint benefit to business. It is worth noting, however, that if the off line regulations are taken together with the on line regulations that are treated in a separate impact assessment the overall effect is one of reduced regulation on business. This package of both off line and on line measures therefore constitutes an “OUT”.
58. The policy proposal excludes micro businesses from all aspects of off line regulations because these directly impose costs on business, and this is reflected in the assessment of impacts presented above.

Risks and assumptions

59. The major risk identified at consultation for Option 1, Option 2 and Option 3 resulted from the voluntary nature of the regulation: the lack of statutory protection against third party copyright infringement, licence infringement (e.g. for software), and other potential legal liability, such as defamation and libel. A person who has been defamed in archived material may have cause for claim in respect of the archived copy, typically because its continued availability to readers perpetuates the defamation. For example the complainant might have obtained a decision (whether via the court or by a separate settlement with the publisher) for all copies to be withdrawn or for an apology or retraction to be published, but the archived copy remains as first published. Under case law (*Loutchansky v Times Newspapers Ltd and Others No 2*) it may be argued that creating a temporary screen copy of a digital work, which happens each time that a person accesses a digital work, constitutes a form of re-publishing and therefore the deposit library might arguably be creating a new defamation. The legal deposit libraries will put in place procedures to take down any defamatory material of which they are informed, i.e. embargo access for a period of years, and will consider other mitigating actions. However such procedures would typically depend upon the legal deposit libraries being made aware of the defamation by the original publisher, who might also therefore bear some responsibility if there is any failure in communications. These risks are resolved through the selection of consultation Option 4 as the chosen final option where deposit is statutory.

Description of implementation plan

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

Specific Impact Tests

Economic and financial

63. The economic and financial implications of the policy proposal have been dealt with in terms of costs to legal deposit libraries and costs and benefits to publishing businesses. Further economic and financial impacts are not anticipated. Competition impacts, in particular, are not expected to arise. Businesses incur a cost from the off line proposal, while microbusinesses which could potentially have suffered under the proposal have been excluded during the moratorium period. The EANCB that has been estimated at £0.01m is, however, miniscule compared to the aggregate size of the publishing industry which is estimated in official statistics to be worth approximately £11.6bn per annum in gross value added terms¹³. The proposal is therefore expected to have no material effect on competition within the publishing market.

Social

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

Environmental

65. There is likely to be a marginal environmental impact of the regulations. For instance, where the option for publishers to switch to electronic depositing could mean a minor reduction in the need for the produce and delivery of paper copies, and be less energy intensive. On the other hand, the regulations require a small number of additional off line publications to be deposited. Due to the very minimal level of both the individual and net effects, we have not attempted to quantify the environmental effects.

¹³ DCMS (2011), Creative Industries Economic Estimates, London

ANNEX 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as described below. If there is no plan to do a PIR please provide reasons below.

Basis of the review:

In its response to the 2012 public consultation, the Government committed to monitor the implementation of the non-print legal deposit regulations for impact and effectiveness and to develop a post-implementation review plan for the regulations. Within 5 years of the date the regulations come into force a review of the regulations will be carried out and a report will be published.

Review objectives:

The review will consider the extent to which the principal policy objective of “allowing preservation of non-print publications for future generations” has been achieved by the implementation of the regulations, as well as determining the extent to which the following policy objectives have been addressed:

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

Review approach and rationale:

The primary focus of the review will be to determine whether the policy – and by extension the regulations - is still required and if it has had the intended effect. In order to make that assessment the review will need to address the following key questions:

- To what extent has the policy achieved its objectives?
- To what extent have the success criteria been met?
- To what extent have there been unintended consequences?

In addition, the review will also consider the extent to which there is scope for simplification or improvement.

Stakeholder views and evidence from relevant sectors will form the basis of the review. The Joint Committee on Legal Deposit (JCLD) will collect appropriate qualitative and quantitative data in order to support an assessment of the impact of non-print legal deposit and the delivery of the policy objectives. This will include collection of data on actual costs and savings for businesses of all sizes so that we can fully review the impact of the regulations on the publishing sector.

The data collected should also enable the effective assessment of whether the anticipated benefits for publishers, legal deposit libraries, research and scholarship, as well as to UK society have been realised. This will include an assessment of the number of non-print works deposited, against the estimated number of overall publications which may be subject to legal deposit.

Another aspect to be considered in the review will be the extent to which the regulations are appropriately compatible with any intervening reforms to copyright legislation and specifically to revisit the issue of restrictions on access to non-print legal deposit content following the expiry of copyright.

Additionally, should the review highlight changes to the obligations of publishers and deposit libraries the DCMS Guidance on the Legal Deposit of Non-Print Works should be revised as appropriate.

Baseline:

There is currently no scheme in place for the legal deposit of non-print works (published either on line or off line). The detail contained in the Impact Assessment identifying the costs and benefits will be used to determine whether the anticipated costs and savings were fully accurate and whether the benefits have been realised.

Success criteria:

DCMS will agree with JCLD the criteria to be used to evaluate the success of the policy objectives and the overall performance of the implemented policy

Monitoring information arrangements:

The JCLD will provide to DCMS updates on the level of depositing (including print, on line and off line works) and comment on the accuracy of our estimated costs and savings of the non-print scheme on an annual basis.

DCMS in consultation with JCLD will produce a PIR report that fully evaluates success against the policy objectives by March 2017, at the latest, and include the following: an executive summary, introduction, benefits realisation, costs incurred against projections, stakeholder / business satisfaction, changes for the future and recommendations.

Reasons for not planning a review:

Not applicable