

## **Regulatory Impact Assessment:**

### **I. LEGAL DEPOSIT LIBRARIES Bill**

### **II. Purpose and Intended Effect of Measure**

#### **(i) Objective**

Under section 15 of the Copyright Act 1911, a copy of each book or serial, or other printed material published in the United Kingdom is required to be deposited, free of charge, in the British Library. Under this, and related, Acts five other libraries: the National Libraries of Scotland and Wales, and the University libraries of Oxford, Cambridge and Trinity College Dublin – known as the Legal Deposit Libraries – are entitled to receive, on request, free copies of any book or other printed publication published in the UK.

The objective of the proposed measure is to extend the provisions of s.15 of the Copyright Act 1911 to cover non-print material to ensure that all publications of significance are collected, regardless of the medium in which they are published, and are preserved as part of the national published archive so as to remain available to future generations of users. The Legal Deposit Libraries Bill will preserve the provisions of the 1911 Act and subsequent Acts for print, but be generic for non-print media giving the Secretary of State for Culture, Media and Sport powers to make secondary legislation. The type of material deposited, the manner of deposit, use and preservation will be prescribed by regulations, subject to consultation and affirmative resolution in both Houses of Parliament. This will enable new and emerging publishing media to be brought within the scope of the Act. By this means, the legislation will be “future proof”.

The proposed measure will affect the British Library (BL), the 5 Legal Deposit Libraries (LDLs) and UK publishers and distributors of non-print publications.

The measure will make it a statutory obligation on publishers to deposit at least one copy all UK non-print publications (as is the case with print publications).

The scope of this RIA is limited to those categories of UK non-print publications to be brought into the legislative framework for the first time, namely electronic off-line and on-line publications<sup>1</sup> in addition to microform publications. Sound recordings, film or video recordings, which are currently subject to separate voluntary arrangements, will not be caught by legislation.

The RIA shows the indicative costs for a range of options relating to the deposit of non-print publications, and recommends a secure network (Option 2) as the most effective means of implementing the deposit policy with regard to non-print material. However, the implementation of the Act and the range of media of publications caught will be determined through secondary legislation.

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<sup>1</sup> The definitions of electronic publications to be caught are based on those contained in *Report of the Working Party on Legal Deposit*, July 1998 Appendix A. Electronic publications include: published documents produced, distributed, stored and used in electronic form including electronic books and multimedia publications (on-line and hand held ie: as diskettes, CD-ROMS), electronic journals/serials (with or without print parallels); databases (off-line and on-line) and internet documents.

The RIA sets down the intent to include selective collection of UK websites within the current legislative framework (Option 4). However it is anticipated that this measure will be a feature of regulations in the longer term, after further work has been carried out on definitions, procedures, trigger mechanisms and technical issues. When it is appropriate, and prior to regulations being made, a further RIA will be prepared specifically addresses the deposit of this class of material.

## **(ii) Devolution**

Under the Northern Ireland Act 1998, legal deposit is a transferred matter and is fully within the competence of the Assembly (although intellectual property is a reserved matter - para. 7 of Schedule 3 to the Northern Ireland Act). Due to the suspension of devolution, this measure is now within the remit of the Secretary of State for Northern Ireland.

The proposed Bill applies to Scotland and Wales, in that it provides for publishers in Scotland and Wales to deposit their works, and it confers functions on the National Library of Scotland and the National Library of Wales.

The Legal Deposit Libraries Bill applies to some matters which have been devolved to Scotland, so the Scottish Executive will also be asked for their consent to the Bill.

The Bill will also provide for the right of consent to the Scottish Executive and the National Assembly for Wales for regulations that seek to restrict the entitlements of the National Libraries of Scotland and the National Libraries of Wales.

## **(iii) Background**

Current UK legislation is applicable only to works printed on paper. It therefore does not apply to electronic on-line and off-line publications, or microforms. While virtually all publication was in the print medium, the system created by the 1911 Act was adequate for the creation and preservation of a national published archive of texts. However, with the development of new media and the growth of electronic publications, the existing legislation has ceased to be adequate to ensure the continuation of a comprehensive archive of the nation's published material into the 21<sup>st</sup> Century.

In January 1996 the British Library, together with the LDLs and other interested parties presented the then Department of National Heritage with a proposal to extend legal deposit to cover non-print materials, including audio-visual publications. Following this, the Government published *Legal Deposit of Publications: a Consultation Paper* in February 1997, inviting views on options for the extension of the legal deposit system.

In January 1998, the then Secretary of State for Culture, Media and Sport announced the creation of a Working Party on legal deposit, chaired by Sir Anthony Kenny. It was charged with examining how legal deposit might be extended, while minimising burdens on publishers. *Report of the Working Party on Legal Deposit* (July 1998), concluded that in the longer term only statutory deposit would be adequate to secure a comprehensive national published archive.

The then Secretary of State for Culture, Media and Sport responded to the Working Party's report in a Parliamentary answer in December 1998, concluding that the

report made a convincing case for moving towards legislation and requested that a voluntary code of practice be drawn up and agreed, as an interim measure and a pilot scheme.

Representatives of the BL, LDLs and publishing trade bodies, who formed the Joint Committee on Voluntary Deposit (JCVD), subsequently drew up the Code of Practice. This came into effect in January 2000 and the JCVD were given the role of overseeing its operation.

In 2002, in anticipation of new legislation, Electronic Publishing Services (EPS) were commissioned by the JCVD to provide updated information for assessing the costs, and other quantifiable impacts on business, the BL and the LDLs of extending legal deposit to non-print publications. The facts and findings of *The Impact of the extension of legal deposit to non-print publications* (October 2002), and subsequent research, are included in this RIA.

#### **(iv) Risk Assessment**

If the provisions of legal deposit are not extended to non-print publications there is a considerable risk that important material contributing to the national intellectual, cultural and scientific record will not be secured and preserved for the benefit of future generations. It is generally accepted that publishers do not have the expertise, or infrastructure, to preserve their publications or provide access beyond the timespan during which they are of commercial value to them.

The value to future users of the national published archive, built on sustained collecting during several hundred years of legal deposit rights, will be substantially diminished if it does not include non-print publications, or includes them in a random fashion. There is a risk to the reputation, and therefore the business, of the BL and the LDLs, nationally and internationally, in the absence of an ability to collect comprehensively and in a sustainable fashion over time.

There is a risk for publishers that the requirement for legal deposit of non-print material could result in the loss of sales, or render the production of certain titles un-commercial. This risk is concentrated for those publishers of small run, high price publications (such as market research data, and multi-work databases, see II (vi)).

There is a risk that with no prospect for success of legislation the Code of Practice would be unsustainable, losing momentum. Moreover, as the shape of non-print "universe" experiences rapid change, there is a risk of obsolescence in the existing voluntary Code of Practice. This would need to be regularly updated to ensure sufficient reach.

There is a risk for the BL and the LDLs that the legislation will require technical mechanisms for preserving electronic publications across multiple generations of computer hardware and software that are, at present, neither fully established or proven for the long term. There is a risk of digital obsolescence, the costs of which are, at present, difficult to forecast.

#### **(v) Business Sectors Affected**

The business sectors that would be affected are the UK publishers and distributors<sup>2</sup> of non-print publications. The types of organisations covered are publishers of on-line and off-line electronic publications (including CD-ROMs, electronic serials, databases and web-based material) and publishers of microforms. In the future, it will include information producers and carriers which have, as yet, not been identified.

(vi) Issues of Equity and Fairness

In extending legal deposit to non-print publications, it is important to ensure that an unreasonable burden is not imposed on publishers and intellectual property rights holders.

Whereas a printed book received by legal deposit can only be read by a single user at any one time in a single location, it is technically possible for a single copy of an electronic publication to be networked for use in many libraries and to be available to multiple users at the same time. Publishers have a justifiable concern that there should be tight and definitive restrictions on access to deposited electronic publications, and that the deposit of electronic or microform publications should not undermine the commercial viability of their publication in the first place. These risks can be minimised by circumscribing arrangements for access and use, including the implementation of embargoes and thresholds.

There are strong indications that the structure of the non-print publishing industry will continue to reflect that of the book, journal and newspaper publishing industries where 20 major UK publishing companies account for 70 % of the market, with none having more than 9% market share<sup>3</sup>. Since the publication of the Working Party Report in 1998, the shape of the non-print publishing universe has changed with a move away from hand held formats (CD-ROM) in favour of 'pure' electronic formats. Industry estimates show that this trend is set to continue with a rapid growth in e-serials projected over the next five years, with the rate of growth declining thereafter<sup>4</sup>, although the universe of e-serials will continue to expand overall.

For the publishers of CD-ROMs, e-books and e-serials, the issue of cost is not a major concern, as it is relatively low<sup>5</sup>, with the e-serials or monographs being delivered, or downloaded, over telecommunications lines.

Microform publishers are concerned that the deposit of works produced in small numbers will have a significant effect on their profitability, and in some cases would put their microfilming programmes in jeopardy. The microform publishing sector differs from most other publishing sectors in that it produces small quantities of specialised publications. Microforms are produced on demand, often over an extended timescale, with some only having world-wide sales of 10-20 copies.

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<sup>2</sup> By distributor, it is meant an agent or agency that has exclusive or shared marketing rights for an item, and is more relevant to the print medium where a book may be distributed in the UK, but not published in the UK. The distinction between distributors and publishers in the non-print medium is likely to be more difficult to sustain, however it is here preserved on the basis of the salience of the print analogy used throughout the RIA.

<sup>3</sup> *The Bookseller's pocket yearbook 2002*, J Whitaker & Sons Ltd, 2001.

<sup>4</sup> EPS predict a change of 100% pa to 5% pa by 2012, *The Impact of the extension of legal deposit to non-print publication*, (October 2002), p11.

<sup>5</sup> Estimated by EPS in 2002 as £1 per deposit for e-serials up to £ 5 per deposit for microforms, *The Impact of the extension of legal deposit to non-print publication* (October 2002),p.39.

Furthermore, within the UK, the BL and the LDLs may be major traditional customers for the publications. In a situation where legal deposit extends to non-print, the BL and the LDLs would no longer need to purchase such items. This may jeopardise the production of individual titles.

To reduce the burden on these publishers it is expected that deposit would be triggered after 6 copies have been sold in the UK, and that a single copy should go to a single depository. This is the protection currently conferred by the Code of Practice, and publishers of microforms consider that this protection must be retained in a statutory system.

Similarly, there are certain categories of high-cost, high-value off-line electronic publications where the number of sales is low, and where the publishers believe that extending legal deposit could undermine commercial viability. Because of this, it is recommended that such off-line electronic publications need not be deposited until after 12 copies have been sold in the UK.

Publishers are more generally concerned about intellectual property, the costs of supplying metadata and access/usage issues<sup>6</sup>. The LDLs are prepared to guarantee restricted access arrangements through a secure network, whereby deposited copies would be available to very limited numbers of users at any given time on a set number of interfaces (eg: one for the BL and each LDL). Furthermore, the BL and LDLs are willing to agree, in negotiation with publishers, that certain items are subject to embargoes. This would mean that these would only be made available for use after the end of an agreed period of time. Such arrangements are currently operating with print publications.

Conversely, the BL and the LDLs are concerned to ensure that provisions for non-print publications parallel that of printed publications, namely they should be accessible to authorised users in each of the LDLs, and not just in a single central repository. This could be achieved by the electronic networking of one copy between the BL and the LDLs (as outlined in Option 2 below) or by the deposit of a total of six copies, one at each of the libraries (as outlined in Option 3 below).

In the selective harvesting of websites issues may need to be resolved in relation to copyright holders, given the unstructured nature of the publishing field and the possibility of harvesting material illegally placed on websites. The BL and the LDLs will need to ensure that by harvesting under statutory legal deposit, they are not downloading illegal material, or damaging the interests of rights holders at a cost to them.

### **III. Options**

The following options are indicative: illustrating the costs and benefits of depositing non-print publications. They have been developed on the print analogy, looking at the relative costs and benefits of depositing 1 or 6 copies. The deposit of off-line and on-line electronic publications and microforms are addressed in Options 2 and 3, websites, while an anticipated part of the Bill, are treated as a separate option, in Option 4.

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<sup>6</sup> Publishers are particularly concerned about document delivery and inter-library loans, which is not anticipated as part of the extension of legislation.

Throughout all the four options below, the legal deposit of print will remain unchanged with a copy being deposited automatically with the British Library and further copies to be deposited with the five other legal deposit libraries on request.

The options are costed according to a 10 year time frame, in recognition of the lasting impact of this legislation (and accompanied by matrices detailing costs and benefits). The costs and benefits are developed on the basis of industry estimates (provided by EPS<sup>7</sup>), but are, nevertheless, subject to measurement error.

### **Option 1: Leave the current voluntary system unchanged**

This option would continue the current system of voluntary deposit of non-print publications.

The voluntary deposit scheme has enjoyed some success, starting slowly but growing to encompass significant volumes of receipts, particularly in the area of monographs. Since the introduction of the voluntary Code of Practice, the BL and the LDLS have been receiving both hand held and 'pure' electronic publications, as well as microforms. Recent data shows that all receive broadly similar volumes of CD-ROM monographs (200-300 pa)<sup>8</sup>, but the BL receives a far greater quantity of e-serial issues both in absolute terms and in terms of increasing growth. With regard to other electronic publications the other LDLS pursue the strategy of requesting material of high relevance to their particular collections. In total the BL receives around 75% of e-monograph output but only 45-50% of e-serials (20,000 items in 2002), the field with the largest potential for growth and diversification. While CD-ROMs and other monographs are catalogued in the same manner as print publications, due to the increasing quantity of e-serials being deposited voluntarily, these are not catalogued (and therefore not accessible in the BL OPAC or national bibliography) but simply accessioned and archived. This would not be sustainable in the longer term.

### **Option 2: Extend legal deposit to cover non-print publications, establishing a shared secure network between the BL and the LDLS, to allow for deposit of 1 copy per publication.**

The deposit of a single copy of a publication in the BL, or another LDL, as determined by consultation and regulations. A secure electronic network would be established between the BL and the LDLS to allow sharing of deposited electronic publications and access across the network<sup>9</sup>. This should negate the need for more than 1 copy per publication to be deposited, which would reduce costs to publishers.

### **Option 3: Extend legal deposit to cover non-print publications; 1 copy deposited per publication in the BL and each of the LDLS (i.e 6 copies in total).**

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<sup>7</sup> *The Impact of the extension of legal deposit to non-print publication*, (October 2002), p11, further models of trends, facts and figures provided by the British Library and EPS on 25 November 2002, 11 December 2002 and 31 January 2003.

<sup>8</sup> Because of the restricted nature of the universe of CD-ROM publications.

<sup>9</sup> The network will be secured in terms of provision of access, and is based on an extension of the print system. Access via the secure network might take one of the following forms: 1) each deposited item only available to a single user across the network at any one time; 2) each deposited item available to six users across the network at any one time; 3) access only after the removal of an embargo. The specific manner in which item deposited will be accessed will depend on the medium and individual item (as with print).

Six copies to be deposited (automatically and by request) with a secure network - Option 3a - or without a network - Option 3b, as determined by consultation and regulations. This produces a slight variation in cost to the BL and the LDLs but greatly increases the costs to publishers. This is based on the print analogy where up to six copies of printed books are currently requested. Given the number of copies deposited, the shared secure network would be optional (although each library would need to create a secure accessing arrangement).

Under Option 1, 2 and 3 for certain high value, off-line publications, the number of copies sold would trigger deposit: 12 copies for high value, off-line publications and 6 copies for microforms.

#### **Option 4: Harvesting UK websites**

This would involve the selective archiving of UK websites, with priority given to sites of current and future research potential. This would work on the basis of partnership and sharing with other agencies. It is assumed that the main institutions who would undertake and co-ordinate this work would be the National libraries.

### **IV. Benefits**

#### **(i) Overview**

The benefits of extending legal deposit to non-print publications are those of the legal deposit system itself. The national published output is systematically and efficiently collected through legal deposit and made available to researchers and other users; it is catalogued and recorded in the libraries' catalogues and in the national bibliography, thereby being made known to researchers and to potential purchasers, nationally and internationally. Items are stored in optimum conditions, and preserved by experts, following national and international standards and best practice. Access to the publications is maintained for future generations of users, long beyond the commercial life of the publication concerned. Intellectual property rights are observed and respected for the duration of copyright.

**Benefits to depositories:** The BL and LDLs will acquire the right to receive copies of non-print publications free of charge, and thereby to collect the national published output on a much broader scale than if the material had to be bought. This also allows limited acquisitions budgets to be spent on UK material outside the scope of deposit, eg: manuscripts and material published abroad which is of importance to UK scholarship and research.

**Benefits to publishers:** Publishers will gain the world-wide notification, advertising and subsequent sales (the 'shop window' effect) of their new titles through systematic recording in the British Library managed British national bibliography, or the libraries' online catalogue, with formal descriptive and subject information. It will also have the added benefit of making these into a more definitive record of the nation's published output.

While it is not routine for print publishers to preserve archives of their publications, some e-publishers are investigating the costs and implications of e-archives. The existence of the national published archive will relieve publishers of this need. The technical complexities and costs of the archiving and long-term preservation of electronic publishing are such that there are major long-term benefits to publishers

of transferring this to legal deposit libraries who have greater experience in object management.

Much contemporary publishing depends upon the research, scholarship and published output of the past, with publishers and their authors relying to a great extent on the BL and the LDLs to provide them with raw material for their future publishing. The benefits to publishers and authors of a comprehensive national archive covering print and non-print are therefore self-evident.

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

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

## **(ii) Quantification and valuation of benefits**

Within the current legal deposit system – namely print – it is estimated, that the purchase costs of the print legal deposit system is at a level of £5M for the British Library and £ 3M for each of the other legal deposit libraries, presenting a grand total benefit (of real costs compared to purchase benefits) of £ 20M pa. These benefits are attributable to the BL and the LDLs, although they are partially offset by the corresponding costs of publishers providing the publications.

The quantification and measurement of benefits of the proposed legislation is complex as reliable data is currently unavailable from the publishing industry. Nevertheless, it can be assumed that the elements that would make up the financial and social benefits would include:

1. Opportunity costs with regard to the savings of the purchase of UK publications and expenditure on other materials able to be bought with the savings.
2. Additional sales from publishers through the appearance in British national biography or legal deposit library collections.
3. Economic benefit generated by national and international use of comprehensive collections in UK legal deposit collections (to authors, publishers and libraries, and more generally to the UK economy).
4. Value to scholars in time saved, through the known location of resources.

Nevertheless, some quantitative estimates of benefits in terms of real costs at 2003 rates are detailed under Options 1, 2, 3 (a/b) and 4.

### **Option 1: Leave the current voluntary system unchanged (refer to matrix 1)**

The benefit to the BL and LDLs is in terms of capturing a percentage of the universe of non-print publications deposited at no charge. However, as discussed above, the voluntary system is potentially unsustainable, as the gaps in the national archive will continue to grow. The public benefit is therefore unpredictable.

The benefits to publishers is limited as there is no statutory obligation to deposit, and therefore, no assurance of a comprehensive permanent archive in the BL or the LDLs.

### **Option 2: Legal deposit of non-print publications with 1 copy and a shared Secure network (refer to matrix 2)**

A key benefit to publishers is the costs of depositing only one copy with the risks concerning access and usage minimised through a secure network.

The BL and LDLs would benefit by saving on the purchase costs of UK non-print publications<sup>10</sup>, and from the maintenance of their prestige and reputation as international institutions, and from foreign research. These benefits would not be fully conferred under the voluntary scheme due to the random nature of deposit.

The BL and the LDLs would also be able to share costs of rendering the collections accessible. By analogy with the print deposit system, it can be assumed that the costs would be shared between the BL and the LDLs: the BL covering 70% and the other LDLs 30%<sup>11</sup>.

Such is the structure of the publishing industry that only the smaller publishers are likely to receive marketing benefit from the 'shop window' effect<sup>12</sup> of the publications' appearance in the British national bibliography and LDL online catalogues and collections. A model proposed here is one extra copy sold of 10% of the corpus of items deposited at a unit price of £ 50 (electronic items carrying a higher price than print when sold). On the basis of this assumption, publishers might benefit between £ 180K - £ 3080K pa, depending on electronic publishing levels and the proportion deposited in the BL and the LDLs.

Publishers may accrue some savings in terms of storage and preservation costs, and transferring some metadata processing costs to the BL and the LDLs who would share this. These may be substantial, though there is currently no means of estimating these.

It is believed that over time the benefits, outlined above, will outweigh the compliance costs to business and the additional costs to the BL and the LDLs of extending deposit to non-print publications (including storage, cataloguing and secure networking costs). The statutory system, managed in accordance with a shared network and one copy deposit, would confer significant, and greater benefits

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<sup>10</sup> The British Library have provided a speculative estimate of £ 100,000K a year in real costs at 2003 rates, based on the total current expenditure on purchase and licensing (£1.1M), less licence costs for journals where it would be necessary (£300K), purchase costs of overseas journals (£ 600K) and journals not deposited immediately or where sales would not trigger deposit (£100K). (BL 31 January 2002)

<sup>11</sup> Indicated in the line in matrix 2 as "contributions/ recoveries from other LDLs".

<sup>12</sup> Large publishers will have significant marketing, advertising and distribution machines.

to the publishers; the BL and the LDLs; the UK economy and society, than the voluntary system.

### **Option 3: Legal deposit of non-print publications with 6 copies deposited in total (refer to matrices 3a and 3b)**

Under this option the same benefits apply to the BL and the LDLs in terms of purchase costs of UK non-print publications, and from the maintenance of their prestige and reputation as international institutions, and from foreign research, but not in terms of sharing costs.

If 6 copies were deposited with a secure network - Option 3a- the BL and the LDLs might be able to share certain costs (though not accessioning, storage and preservation). This benefit would not be conferred in the absence of a shared secure network - Option 3b. A small saving is reflected in terms of libraries' costs in Option 3b in comparison to Option 3a, due to the lack of expenditure on a secure network. However individual libraries would certainly need to have secure stand-alone systems.

Conversely, the potential lack of a secure network may jeopardise secondary benefits from the 'shop window' effect. So the model proposed here is one extra copy sold of 5% of the corpus of items deposited at a unit price of £ 50 (electronic items carrying a higher price than print when sold). On the basis of this assumption, publishers might benefit between £ 90K - 1540K pa, depending on electronic publishing levels.

So while a possible benefit for the BL and the LDLs might be a reduced outlay on a shared secure network, thereby reducing server and maintenance costs, this may equally reduce the benefits in terms of sharing across the six libraries. Furthermore there may be additional costs in terms of several secure networks. In the case of the deposit of six copies, the benefits accrued through a statutory system to the BL and the LDLs, as well as the UK economy/society, would be more than outweighed by the costs to publishers who would need these copies. Moreover the lack of secure network is likely to be unpopular with publishers and diminish consensus between them and the libraries.

### **Option 4: Harvesting UK websites**

The option applies particularly to the British Library, the National Library of Scotland the National Library of Wales. The benefits include the ability to preserve, selectively, a representative sample of UK websites, and thus create a more complete national archive in the web domain. Benefits will be accrued if this is undertaken in partnership with other agencies, eg: the Public Record Office. By this means the National Libraries could co-ordinate the harvesting and archiving of the UK Web presence, but share the responsibility of this exercise with other responsible bodies.

## **V. Compliance Costs for Business, Charities and Voluntary Organisations**

While the benefits of this proposal (to introduce statutory legal deposit for non-print publications) accrue to the British Library and other legal deposit libraries, publishers

and the UK economy and society, the costs of compliance rest on the BL, the LDLs and the publishers only.

The compliance costs for typical publishing business (publishers and distributors) will include, for each item deposited: the unit costs of producing the copy or copies of the item deposited and of the accompanying documentation (including supplying metadata<sup>13</sup>); unit costs of the staff time, material and delivery costs involved in the process of depositing material, including dealing with any queries or clarification necessary before or after deposit. In addition, it will take into account, the potential loss of revenue from sales if the item would otherwise have been bought by the BL and the LDLs, or through customers not buying the item because of its availability in a depository.

Compliance costs for the LDLs will be made up of the costs of processing, storing and making accessible the extra non-print material to be deposited with them. Areas of cost will therefore be in relation to: accessions; cataloguing; administration, including metadata requirements in processing the material; capital and revenue outlay on new technical infrastructure (recurring and one-off), eg: if the shared secure electronic network is to be created; capital and revenue outlay on making the new material accessible (including for example new monitors for computer terminals, and staff time); and storage costs. The costs have been developed with particular reference to the BL experience.

These costs are shown for each of the options below according to a 10 year time frame. The costs and benefits are developed on the basis of industry estimates (provided by EPS<sup>14</sup>), but are, nevertheless, subject to measurement error.

**Option 1: Leave the current voluntary system unchanged (refer to matrix 1)**

Under the voluntary scheme there is no obligation to deposit, nevertheless projecting on the basis of the current voluntary scheme, publishers compliance costs would range from £ 419K – £ 4183K pa, over a 10 year period.

EPS (2002) estimate that on the basis of current costs for accessioning publications and future costs of cataloguing, storage, and preservation, the BL and the LDLs will have rising costs. This will be related to their need to provide access to increasing numbers of publications, voluntarily deposited. However, given the lack of a common secure network under the voluntary scheme, the costs would not be shared, excepted in the realm of cataloguing.

Taking into account the rate of growth of e-serials and the proportion of the non-print universe being deposited (rising to a potential 60% of non-print publications), it is anticipated that that the total costs to the BL and the LDLs would be £ 788K - £ 2157K pa, over a 10 year period.

	Publishers	BL and LDLs
Estimate costs pa (real costs at 2003 rates)	£ 419K - £ 4183K	£ 788K- £ 2157K

<sup>13</sup> While publishers may seek to supply metadata voluntarily and automatically, legislation will place them under no obligation to deposit metadata.

<sup>14</sup> *The Impact of the extension of legal deposit to non-print publication*, (October 2002), p11, further models of trends, facts and figures provided by the British Library and EPS on 25 November 2002, 11 December 2002 and 31 January 2003.

The breakdown of costs are provided in the attached matrix. This staggers one-off costs over the 10 year period, creating a minimum compliance cost in Year 3.

**Under Options 2 and 3: Extend legal deposit to cover non-print publications**

Under the current voluntary scheme, the BL and the LDL acquire 75% of hand held e-publishing output and 45-50% of electronically delivered publications. Owing to the current rate of acquisition of electronically delivered publications, the effect of introducing a statutory obligation to deposit can be expected to have a major effect, particularly in the arena of e-serials .

The cost of handling non-print publications will therefore depend over a 10 year period on:

- 1) the rate at which the publications are accessioned,
- 2) the growth of e-serials output and
- 3) the proportion of the electronic universe captured by deposit.

The model used in this RIA, takes into account the experience of the BL and the other LDLs to assess the cost of accessioning, and uses the model of growth provided by EPS for non-print publications over a 10 year period. It is assumed that under a statutory scheme, the BL and the LDLs will set strategic targets to manage the acquisition of the non-print publications building steadily up to a target of 95% of the non-print universe over the course of the first six years from the introduction of the statutory scheme.

**Option 2: Legal deposit of non-print publications with 1 copy and a shared network (refer to matrix 2)**

Under the statutory scheme where one copy is deposited, compliance costs for the publishers will include the costs outlined above for an increasing number of electronic publications under conditions of planned growth. In addition to this, there will be lost sales (including to the BL and the LDLs). These costs are shown as rising, in line with the planned acquisition strategy of the BL and the LDLs. The estimated costs range from £ 249K – £ 2418K pa, over a 10 year period.

These costs are lower than under Option 1, as it is assumed there will be no loss of sales, due to the efficiency of the secure network and the implementation of safeguards. The deposit of one copy will keep total costs to the publishers (in comparison with Options 1 and 3a/b) at a minimum and reduce the risk of individual error within each of the libraries, thereby reassuring the publishers.

The BL and the LDL’s compliance costs would include the setting up and maintenance of a secure network in addition to other costs detailed above. Due to the presence of a secure network, it is assumed that the total costs will be shared between the BL and the LDLs according to the model of 70% and 30%.(currently the case with print). The estimated costs range from £ 230K – 856K pa, over 10 years.

	Publishers	BL and LDLs
Estimate costs pa (real costs at 2003 rates)	£ 249K – £ 2418K	£ 230K – 856K

The breakdown of costs are provided in the attached matrix. This staggers one-off

costs over the 10 year period, creating a minimum compliance cost in Year 2.

**Option 3: Legal deposit of non-print publications with 6 copies deposited in total (refer to matrices 3a and 3b)**

Under the statutory scheme where 6 copies are deposited (automatically and on request), publishers compliance costs would range from £ 613K - £8579K pa, over a 10 year period. This would be the same with or without a secure network, namely under Options 3a and 3b.

It is however, envisaged that under Options 3a and 3b the good relations built up through the BL, the other LDLs and the publishers would be compromised. With the deposit of six copies, there is an added risk of weaker systems and unauthorised uses. Stand alone secure networks could be developed in each of the libraries but this would present poor value for money and may appear vulnerable to misuse. Publisher concern may result in refusal to deposit and require regulations to be enforced. Conversely, without a secure network, the costs to publishers may increase through loss of sales, the model proposed here is copies lost at the rate of 10% of the corpus of items deposited at a unit price of £ 50 (electronic items carrying a higher price than print when sold).

Under Option 3a, the BL and the LDLs' costs will include setting up and maintenance of a secure network with one off costs, and some opportunities for shared costs. Under Option 3a, the costs to the BL and the LDLs would £ 593K – 2298 K pa, over 10 years.

Under Option 3b, the opportunities for sharing costs will be limited due to the lack of networking. Under Option 3b, the costs to the BL and the LDLs would be slightly less (due to the lack of shared secure network) £ 454K– 2260K pa, over a 10 year period.

	Publishers	BL and LDLs
Estimate costs pa (real costs at 2003 rates ) under Option 3a	£ 613K - £8579K	£ 593K – 2298 K
Estimate costs pa (real costs at 2003 rates) under Option 3b	£ 613K - £8579K	£ 454K – 2260K

**Option 4: Harvesting UK websites**

There is no means of estimating the costs of archiving non-commercial web sites, especially in the absence of reliable data as to how costs might be shared through partnership arrangements. The experience of the BL's experimental *Domain UK: Interim Report* (March 2002) is valuable. On a three year time horizon, it can be assumed that running cost of £ 600K pa (real costs at 2003 prices) would allow the management of an archive of UK domain web-sites in accordance with following targets: 10,000 research-focussed UK domain web-sites (0.3% of the total domain of UK web sites) on a quarterly basis, and undertake an annual harvest of the entire UK domain of three million websites. However, at this juncture it is not possible to estimate, with confidence, what costs would look like over a 10 year time horizon.

**VI. Consultation with Small Business: the "Litmus Test"**

The Government published *Legal Deposit of Publications: a Consultation Paper* in February 1997, which invited respondents to submit their views on a number of specific questions relating to the existing system of legal deposit, as well as to options for extension to electronic publications, sound recordings, film and video recordings and microform publications. 3,000 organisations were consulted mostly representing publishers and repositories most likely to be affected by any change in the legislation. These included small to medium enterprises (SMEs) amongst their memberships. 161 replies were received, and a summary of the replies was published by DCMS.

The Kenny Working Party (1998) comprised of representatives of the publishing industry. The Working Party met on five occasions and consulted widely, both through informal meetings and by means of an Open Day in June 1998, which was attended by representatives of many interested organisations.

Further consultation took place during the work to draw up the *Code of Practice for the Voluntary Deposit of Non-Print Publications*. This was drafted by a small bilateral group representing the BL, the LDLs and publishing industry associations, and comments received from publishers and LDLs shaped the final agreed text.

Since the implementation of the Code of Practice on voluntary deposit, the JCVD, who represent the four major publishing trade bodies - the Publishers' Association;; the Directory Publishers's Association, the Periodical Publishers Association and the Association of Learned and Professional Society Publishers(ALPSP)- the BL and the LDLs have worked to secure a more meaningful alliance between publishers and libraries, in order to resolve issues arising from the voluntary system prior to legislation.

The report produced in advance of this RIA, *The Impact of the extension of legal deposit to non-print publications* (EPS 2002), contacted 300 publishers over the summer of 2002 by questionnaire of which 37 responded. Publishers expressed greatest concern over issues of copyright, metadata and access/usage issues. The majority of publishers who responded were less concerned about the cost of deposit, with the exception of publishers of 'high value' content who were concerned as to the major loss of sales. Smaller CD-Rom publishers viewed statutory legal deposit as a potential opportunity, potentially bringing a gain in sales. Publishers were clear that they wished to find means of sharing metadata costs, and minimising risks surrounding access and use though agreed security arrangements, including thresholds, embargoes and access restrictions. For the majority of publishers, setting up a secure and shared network was seen as key to the success of the statutory schemes, with database publishers pressing for the most secure options to be pursued. Publishers expressed some concern as to how websites could be legally deposited.

All four publishers associations represented on the JCVD, especially the ALPSP include SMEs amongst their members and the research was publicised within these organisations. EPS is itself an SME. Compliance in respect of the extension of legal deposit is integral to the business of publishing in that the products and the metadata can be spun out of the publishing process without additional significant effort, including to SMEs. It will not require special equipment or additional purchases of supplies, although the person hours available to comply relative to the total number of person hours available within an SME is likely to be higher than with

large businesses. Nevertheless, the burden on SMEs is unlikely to be disproportionate when compared with the large publishing corporations.

Furthermore consistent with the generic content of the legislation it is assumed that the impact of small businesses may be specifically reviewed, if necessary, during consultation and prior to secondary legislation.

## **VII. Competition Assessment**

Under Options 2 and 3, publishers would be expected to incur additional costs for legal deposit of electronic publications, processing, administration and delivery to BL and other LDLs. There may also be loss of sales of certain high cost, low volume, publications for which the BL and LDLs may represent the main custom. However steps will be taken to minimise this affect whereby deposit would only be made after sale of 12 copies. It is not anticipated, however, that there would be a significant affect on competition arising from implementation of Options 2 and 3 due to the low costs involved. Costs would be proportionate according to the size of the publisher (the number of electronic publications it makes). Whilst there is concentration in some sub-sectors of the publishing market, Options 2 and 3 would not create any new barriers to entry, and is not likely to change the market structure.

## **VIII. Enforcement and Sanctions**

In the event of the failure of a publisher to deposit a publication as required under an extant statutory instrument made under the Act by the Secretary of State for Culture, Media and Sport, the nominated deposit agency would be entitled to apply to a County Court for an order to enforce the duty to deliver the material. Where such an order is not effective or appropriate, the Bill will provide that the publisher make a payment not more than the cost of making good the failure to comply.

The 1998 Working Party recommended that in the event of legislation a standing committee should be set up, responsible to the Secretary of State, containing representatives both of publishers and LDLs and their users, to consider applications from publishers for additional material to be excluded from deposit or embargoed from immediate use, and to resolve points of dispute about the application of the obligation of legal deposit.

Due to the rapidly changing nature of the publishing industry being captured by the legislation it is recommended that rather than a Standing Committee, the JCVD form the basis for an informal advisory committee monitoring the progress of the legislation and reporting, when appropriate, to the Secretary of State for Culture, Media and Sport, or the Department for Culture, Media and Sport. It is recommended that this committee reflect the interests of all stakeholders caught by the legislation as this develops and changes.

## **IX. Monitoring and Review**

It is recommended that the Joint Committee on Voluntary Deposit, or a successor body, continue to have an informal role in the monitoring and review the effects of the new legislation and report back to the Secretary of State for Culture, Media and Sport as and when necessary.

## X. Consultation

### (i) Within Government

Those agencies consulted within Government have included the various interested parties within the DCMS, the DTI, the Patent Office, the DfES, the Cabinet Office, the Small Business Service and the Office of Fair Trading. In addition the Scottish Executive, the National Assembly for Wales and the Northern Ireland Executive have been consulted throughout the process.

### (ii) Public consultation

Note the consultation detailed under VI. The Legal Deposit Libraries Act 2003 will be implemented through secondary legislation with affirmative resolution in both Houses. A consultation of 12 weeks will be a requirement of this process. It may be additionally advisable for further costs and benefits to form part of additional Regulatory Impact Assessments, as necessary, prior to secondary legislation.

## XI. Summary and Recommendation

The proposal – to extend legal deposit to electronic publications – accrues benefits to the UK economy, to society, to the British Library and the other legal deposit libraries, whereas the cost accrue solely to the libraries and publishers.

The current voluntary system does not confer the benefits of a statutory system, to the libraries, the publishers, the UK economy or the public. It captures a limited percentage of the publishing universe in a haphazard manner and it is potentially unsustainable in its current form. Leaving the current system unchanged - Option 1 - will not, therefore, be adequate.

Under Option 2, it is apparent that those compliance costs which will affect UK publishers, the BL and the LDLs and will, in the medium to long term, be outweighed by the benefits to nation of a comprehensive and accessible national archive of UK publications in print and non-print form.

Option 3 is by far the most costly option, with publishers and libraries investing heavily in a system that could be more properly shared, to mutual advantage of the publishers and the libraries, and to public benefit. The costs of a multiple deposit system are, potentially, not offset by the benefits.

Options	NPV Publishers 6% discount	NPV Publishers 3.5% discount	NPV Libraries (BL & LDLs) 6% discount	NPV Libraries (BL & LDLs) 3.5% discount
Option 1	- £15094K	-£7769K	- £ 9731K	-£ 1244K
Option 2	£1894K	£2288K	- £3799K	-£4415K
Option 3a	-£25248K	-£29790K	- £12194K	-£14212K
Option 3b	-£25248K	-£29790K	- £11819K	£13798K

It is recommended that legislation should be introduced to extend the legal deposit of UK publications to include publications in media other than print.

It is recommended that the legislation should be generic in the first instance so that it can be amended and "future proofed" through secondary legislation. This will

enable different classes of publication to be caught by regulations and the precise implementation in each case to be determined through affirmative resolution in both Houses. Secondary legislation will be informed in each case by consultation and further, and individual RIAs, as necessary.

It is further recommended that secondary legislation should, in the first instance, cover the following non-print publications including on and off-line electronic publications and microforms, but excluding websites. For this range of publications, and for future management of legal deposit of electronic publications, it is recommended that the method of implementation outlined in Option 2 - a deposit of one copy with an electronic secure network - be followed.

Option 2 provides for the creation of comprehensive national archive, held and shared by the BL and the legal deposit libraries in a manner which imposes the least burden of cost onto the libraries and the publishers, but the maximum benefit to the UK public in terms of economy and society.

## **XII. Declaration**

I have read this Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Signed**.....

**Date**.....

**Minister's Name**.....

**Title**.....

**Department**

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