

**A CONSULTATION DOCUMENT ON
ESTABLISHING THE LEGAL DEPOSIT ADVISORY PANEL**

**A CONSULTATION DOCUMENT ISSUED BY
THE DEPARTMENT FOR CULTURE, MEDIA AND SPORT
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CONTENTS

Executive Summary

1. BACKGROUND TO ESTABLISHING THE LEGAL DEPOSIT ADVISORY PANEL

a) **THE HISTORICAL BASIS FOR THE LEGAL DEPOSIT LIBRARIES ACT 2003**

b) **AN OVERVIEW OF THE LEGAL DEPOSIT LIBRARIES ACT 2003**

2. PROPOSALS FOR CONSTITUTING THE ADVISORY PANEL

3. NEXT STEPS

Consultation

Annex A Regulatory Impact Assessment

Annex B Terms of Reference

Annex C Chair Role Specification

Annex D Members Role Specification

EXECUTIVE SUMMARY

This consultation document is seeking views on the proposals relating to the constitution of the Legal Deposit Advisory Panel ("Advisory Panel"), in particular the terms of reference and panel membership as contained in the annexes.

The first section of the Consultation Document provides background on the history of legal deposit and the development of the Legal Deposit Libraries Act 2003 (2003 Act). The 2003 Act is one of the first pieces of legislation in the world to extend the system of legal deposit from print to non-print. The 2003 Act received Royal Assent on 31 October 2003 and came into force on the 1 February 2004. The 2003 Act extends the print regime as stated in the 1911 Copyright Act,¹ and identifies six legal deposit libraries to receive print and non-print work². The 2003 Act provides a flexible but enduring framework, which has the potential to cover future, and as yet unknown, publication media. During its passage through Parliament, Ministerial undertakings were made as to the creation of an Advisory Panel to assist with, and advise on, the making of secondary legislation.

The second section of the Consultation Document details the proposals for the constitution of an Advisory Panel. It proposes that the Advisory Panel should be established as an Advisory Non-Departmental Public Body, operating at arms length from Government. It describes the key challenges and the need for the Advisory Panel to provide independent expert advice that balances legitimate archival needs with the business interests of publishers and other stakeholders.

Annex A is a Partial Regulatory Impact Assessment. This argues that failure to constitute an independent Advisory Panel will severely compromise the implementation and effectiveness of the 2003 Act. Without the Advisory Panel, there will be no clear and independent means of providing advice to the Secretary of State on the timing, content and implementation of the 2003 Act. It concludes that in the absence of an Advisory Panel, there is an increased risk that important non-print material contributing to the national, intellectual, cultural and scientific record would be lost.

Specific proposals relating to the establishment and composition of the Advisory Panel are outlined in Annex B (Terms of Reference) and Annex C & Annex D (role specifications for Chair and Members respectively).

In Annex B, we seek views on the proposal that the role of the Advisory Panel should be to:

- Advise the Secretary of State on the content of regulations and make recommendations for future legislation;

¹ The 1911 Copyright Act provided that the publisher of every book (as defined in the Act) in the United Kingdom should, within a month of publication, deposit at their own expense one copy of the book with the British Library. In addition upon written request the publisher should deposit one copy of the book with each of the other legal deposit libraries (the National Library of Scotland; the National Library of Wales; the Bodleian Library, Oxford; the University Library, Cambridge; Trinity College, Dublin).

² Non-print includes 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, microfiches and microfilms), electronic journals/serials (with or without print parallels); databases (off-line and on-line) and internet documents.

- Monitor and oversee the operation and implementation of 2003 Act;
- Execute all responsibilities in accordance with the letter and spirit of 2003 Act;
- Advise on the operation of the 2003 Act.

In Annex C and D, we are seeking views on the proposal that the Advisory Panel should consist of 15 Members including a Chair, of which four Members will be ex-officio appointments, and the remaining Members will be appointed through open competition in accordance with Office of the Commissioner for Public Appointments regulations. The proposals seek to establish a membership that will ensure the Advisory Panel has an understanding of the wide range of issues arising out of the legal deposit of non-print material, and can provide fair and balanced advice on the incremental implementation of the 2003 Act. This will be achieved by drawing a balanced membership from the legal deposit libraries, the publishing community, and independent experts.

We are now seeking your views on the attached proposals, namely:

- the establishment of the Advisory Panel, including the role of the Advisory Panel;
- the composition of the Advisory Panel and the role specification of members

The deadline for response is the 16 February 2005.

Please respond to:

By e-mail: legaldeposit@culture.gsi.gov.uk

By post:

Toby Nerval
Department for Culture Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

By phone:

020 7211 6174

1. BACKGROUND TO ESTABLISHING THE LEGAL DEPOSIT ADVISORY PANEL

a) The Historical Basis for the Legal Deposit Libraries Act 2003

The history of legal deposit extends back to the 17th Century and culminates most recently in the Legal Deposit Libraries Act 2003 ("2003 Act"). Prior to the 2003 Act print material was legal deposited under the Copyright Act 1911 ("1911 Act"), which provided that the publisher of every book (as defined in the 1911 Act) in the United Kingdom should, within a month of publication, deposit at their own expense one copy of the book with the British Library. In addition upon written request the publisher should deposit one copy of the book with each of the other legal deposit libraries (the National Library of Scotland; the National Library of Wales; the Bodleian Library, Oxford; the University Library, Cambridge; Trinity College, Dublin).

The 1911 Act applied only to printed works. The term *book* was defined broadly and encompassed pamphlets, sheets of letter-press, sheets of music, maps, plans, charts and tables, journals and newspapers. It did not extend to forms of publication – non-print – which were not then in existence. With the development of new media and the growth of publication in non-print forms, the 1911 Act ceased, at the end of the 20th century, to be adequate to ensure that the UK's published output was archived across the range of published forms.

In February 1997 the Government published *Legal Deposit of Publications: a Consultation Paper*, inviting views on options for the extension of the legal deposit system. The consultation paper invited respondents to submit views on a number of specific questions relating to:

- ♦ *the existing system of legal deposit for print publications*
- ♦ *options for extension to electronic publications, sound recordings, film and video recordings and microform publications*
- ♦ *the implications for publishers' intellectual property rights; and*
- ♦ *costs to both publishers and the taxpayer*

Following this consultation the Working Party on Legal Deposit was created, chaired by Sir Anthony Kenny, then Chairman of the British Library Board. This examined how legal deposit could be extended, while minimising burdens on publishers. The *Report of the Working Party on Legal Deposit (1998)* argued that in the longer term only statutory deposit would be adequate to secure an archive of the UK's published output.

The then Secretary of State for Culture, Media and Sport concluded that the report made a convincing case for moving towards legislation and requested that, as an interim measure, a voluntary code of practice and a pilot scheme be established. In 2000, representatives of legal deposit libraries and some publishing trade bodies formed the Joint Committee on Voluntary Deposit (JCVD), to create and oversee the operation of the Voluntary Code of Practice.

Subsequent to the drawing up of the Code of Practice, the JCVD worked to promote the success of the scheme, incrementally extending both its volume and its nature, to encompass issues relating to online, as well as offline, publications. Over the course of the operation the Voluntary Code, the members of JCVD also worked to

consider degrees of access to the material, and prepared the ground for securing future legislation.

In 2003, the Legal Deposit Libraries Bill was sponsored by Chris Mole, MP. An accompanying Regulatory Impact Assessment was published that incorporated the findings of a study commissioned by JCVD from Electronic Publishing Services on the quantifiable impacts of extending legal deposit to non-print publications. The 2003 Act received Royal Assent on 31 October 2003 and came into force on 1 February 2004.

Subsequent to the passage of the 2003 Act, the JCVD has been reconstituted with an enlarged membership to include members of the digital publishing community and newspapers. This new committee is called the Joint Committee on Legal Deposit (JCLD). The JCLD is currently undertaking a review of the voluntary scheme for off-line publications and developing a pilot scheme for the voluntary deposit of academic e-journals, as well as looking at issues of territoriality.

b) An Overview of the Legal Deposit Libraries Act 2003

The 2003 Act extends the provision of the 1911 Act, by allowing for the UK's published output (and thereby its intellectual record and future published heritage) to be collected by the six prescribed legal deposit libraries. The 2003 Act has specific provisions in relation to printed work (currently in force), and generic provisions in relation to non-print works³. It provides a flexible but enduring framework, which has the potential to cover future, and as yet unknown, publication media. In relation to non-print, the 2003 Act will be implemented by secondary legislation created through a process of identification, consultation and economic assessment. The Regulations will need affirmative resolution in both Houses of Parliament. The 2003 Act will allow the non-print archive to be built up incrementally, identifying classes of publication to be brought into scope, and appropriate access and deposit provisions to be worked out accordingly.

The 2003 Act balances the duty to deposit with limitations on access, allowing deposit libraries to collect material, whilst ensuring necessary safeguards controlling the use and access of this material are in place. Regulations may not be made on certain matters unless the Secretary of State considers that the costs to publishers do not outweigh the benefits of the deposit of the material in question. Similarly, Regulations may not be made on certain other matters unless the Secretary of State considers that they do not unreasonably prejudice the interests of publishers. Furthermore, the 2003 Act contains a statutory obligation, before regulations are made, to consult deposit libraries and those publishers appearing likely to the Secretary of State to be affected. The 2003 Act also sets out the entitlements of the Scottish Executive and the National Assembly for Wales.

During the passage of the 2003 Act Ministerial undertakings were made in relation to the creation of a Legal Deposit Advisory Panel ("Advisory Panel"). These stated that an Advisory Panel would be created to advise the Secretary of State on the content, drafting, timing and implementation of Regulations, as well as their impact on stakeholders and other issues relating to legal deposit. Furthermore they stated

³ Non-print includes 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, microfiches and microfilms), electronic journals/serials (with or without print parallels); databases (off-line and on-line) and internet documents.

that no Regulations will be laid before Parliament until an Advisory Panel has been constituted. DCMS is now seeking to establish the Advisory Panel to progress the implementation of the Act for non-print material.

2. PROPOSALS FOR CONSTITUTING THE ADVISORY PANEL

It is proposed that the Advisory Panel will be a lower-tier Non-Departmental Public Body (NDPB). An NDPB is a body with a role in the process of national Government which is not a Government department or part of one, and operates at arms length from Ministers. Advisory NDPBs are generally set up to provide independent expert advice to Ministers and their departments on matters within their sphere of interest. The primary purpose of the Advisory Panel will be to advise the Secretary of State on the timing and content of Regulations relating to legal deposit (the terms of reference at annex B state clearly the objectives of the Advisory Panel).

The Advisory Panel will submit recommendations for new Regulations to the Secretary of State. The Secretary of State will consider the advice of the Advisory Panel and detailed consultation will precede any Regulations being made, as required by the 2003 Act, in order to provide sufficient opportunity for publishers and deposit libraries to make their views known on all aspects of the Regulations.

During the passage of the Act Ministerial undertakings were made in relation to the timing of implementation. Ministers expressed the view that the initial Regulations would concern offline products⁴ and could use the current voluntary system, operated by the JCLD, as a guide. E-journals were identified as a discrete category for Regulations that could follow. Other Ministerial undertakings were: full review and assessment of the on-line environment prior to making Regulations; incremental implementation with due regard to their impact on publishers and libraries; consideration of the issue of overseas contracts when regulating; and the establishment of an early definition of UK publications.

The JCLD is investigating some of these issues, and the Advisory Panel will be able to draw on JCLD's work.

It is proposed that Advisory Panel Members may co-opt others to strengthen its expertise and experience on particular issues. Co-opted Members may be needed to give particular expertise if the Advisory Panel is unable to achieve this by other means or when it needs to resolve particular issues in relation to specific areas of non-print media. Co-option should be time limited and should not be used as a route to create permanent Members by other means.

The key challenge for the Advisory Panel in making recommendations on these Regulations will be getting the correct balance between the legitimate needs of the archive and the implications and costs for the businesses of publishers and other stakeholders. When considering the implementation of the 2003 Act, the Advisory Panel will need to steer a course between the concerns of libraries and publishers which will revolve around intellectual property, costs of transferring data, storage costs and provisions, access issues and safeguards, and keeping up to date with new publishing media. Members of the Advisory Panel will have a key role in shaping Regulations and providing advice in relation to identifying classes of publication

⁴ Refers to material such as CD-ROMS; microforms (microfiches and microfilms)

being brought into the scope of the 2003 Act and appropriate access and deposit provisions.

The Advisory Panel should provide effective advice on all issues arising from non-print media, taking into account the interests of all relevant parties. The Advisory Panel should provide even handed advice when overseeing issues relating to implementation and future Regulations.

In keeping with the spirit of the 2003 Act we are seeking to establish a membership that will ensure the Advisory Panel has an understanding of the wide range of issues arising out of the legal deposit of non-print material, and can provide fair and balanced advice on the incremental implementation of the 2003 Act. The terms of reference (Annex B) and the role specifications (Annex C & Annex D) have been formulated in order to achieve this.

3. NEXT STEPS

The proposed terms of reference and role specifications for the Advisory Panel have been formulated in dialogue with interested members of the legal deposit libraries and the publishing community. The aim, as described above, is to create an effective and balanced panel.

This consultation seeks to extend the discussion to the wider community and welcomes your views on the proposed establishment and composition (the terms of reference and role specifications) of the Advisory Panel.

Consultation

You are invited to respond to the proposals in this document, and to share any views on the constitution of the Legal Deposit Advisory Panel. **The closing date for responses is 16 February 2005**

You can respond in the following ways:

By email: legaldeposit@culture.gsi.gov.uk

By post:

Toby Nerval
Department for Culture Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

By phone:

020 7211 6174

This consultation exercise is being conducted in accordance with the Government's revised Code of Practice for Consultation. Under this code the following criteria apply:

- ♦ Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
- ♦ Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses
- ♦ Ensure that your consultation is clear, concise and widely accessible
- ♦ Give feedback regarding the responses received and how the consultation process influenced policy
- ♦ Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator
- ♦ Ensure your consultation follows regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

You are invited to comment on the extent to which you believe this document adhered to these criteria, and we would welcome suggestions for improvements to the consultation process. Comments or complaints on the consultation process should be addressed to:

Liz Sweet
Strategy, Policy and Delivery
Department for Culture Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH
020 7211 6373

Email: liz.sweet@culture.gsi.gov.uk

A summary of responses will be published within 3 months of the consultation closing date and will be available on the DCMS website: www.culture.gov.uk

The names and addresses of respondents may be made public unless confidentiality is specifically requested. In accordance with freedom of information legislation, individual responses may be made available to anyone who asks for them, unless one of the exemptions in the legislation applies, for example the information is provided in confidence, or its disclosure would prejudice third parties.

**Partial Regulatory Impact Assessment:
The Impact of Creating and Maintaining the Legal Deposit Advisory Panel**

1. Title of Proposal

Legal Deposit Advisory Panel Consultation Document

2. Purpose and intended effect of measure

a) The Objective

The consultation document sets out proposals for establishing the Legal Deposit Advisory Panel ("Advisory Panel"), including how this should be constituted and the appointment of members. The scope of this RIA is limited to the impact of creating and maintaining the Advisory Panel and **does not** cover the impact of implementing any Regulations that the Advisory Panel will recommend in the future. Further consultation, including Regulatory Impact Assessments (RIA), will be undertaken on any proposals for secondary legislation prior to enactment.

The Legal Deposit Libraries Act 2003 ("2003 Act") contains a statutory obligation, before regulations are finalised, to consult deposit libraries and publishers appearing to the Secretary of State to be likely to be affected. Ministerial undertakings were made to confirm the Government would be establishing an Advisory Panel to advise the Secretary of State and progress implementation of the 2003 Act.

DCMS is now seeking to establish the Advisory Panel, and seeking views on the proposals for its establishment and composition (terms of reference and role specifications).

b) 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. 27 of Schedule 3 to the Northern Ireland Act). Due to the suspension of devolved Government in Northern Ireland, this measure is now within the remit of the Secretary of State for Northern Ireland.

The 2003 Act 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 2003 Act also requires the consent of the Devolved Administrations in most instances for Regulations that remove or confer a legal deposit entitlement on the National Library of Scotland and the National Library of Wales.

The Advisory Panel has been constituted in such a way as to recognise the statutory right of the National Library of Wales and the National Library of Scotland, thereby ensuring representation of those libraries. It has also been constituted to ensure there is representation from the Libraries of Ireland, in order to recognise the request of Northern Ireland to have a presence on the Advisory Panel, as well as monitoring any developments in legal deposit within this region.

c) The Background

The 2003 Act extends the provision of the 1911 Copyright Act by allowing for the inclusion of non-print publications in legal deposit. The 2003 Act has specific provisions in relation to printed work (already in force), and generic provisions in relation to non-print works. It provides a flexible but enduring framework, which has the potential to cover future, and as yet unknown, publication media. In so doing, it allows print and non-print publications to be preserved for future generations and be accessed by researchers and screened users.

The 2003 Act sets out broad powers for the Secretary of State with regard to the deposit and use of non-print material. These powers potentially impose a series of duties on publishers – with regard to deposit – and on libraries – with regard to preservation and access. The 2003 Act will be implemented by secondary legislation created through a process of identification, consultation and economic assessment. The 2003 Act will allow the non-print archive to be built up incrementally, identifying classes of publication to be brought into scope, and appropriate access and deposit provisions to be worked out accordingly.

The Advisory Panel will have a key role in advising the Secretary of State on the content, drafting, timing and implementation of Regulations, as well as their impact on stakeholders and other issues relating to legal deposit. No Regulations will be made until the Advisory Panel has been constituted. DCMS is now seeking to establish the Advisory Panel to progress the implementation of the legal deposit system in the non-print environment.

The terms of reference and role specifications for the Advisory Panel were formulated in dialogue with members of the legal deposit libraries and the publishing industry through the Joint Committee on Legal Deposit.

d) Risk Assessment

Establishing the Legal Deposit Advisory Panel is a Ministerial undertaking. It mitigates the risk of losing important non-print material of value to the national intellectual, cultural and scientific record. With more and more material being available only through digital means this risk increases, resulting in substantial gaps in the record. Consequently not to establish the Advisory Panel would undermine the letter and spirit of the 2003 Act.

If the Advisory Panel is not constituted in a way that ensures a fair and balanced view, which safeguards the interests of publishers and secures the national published output for future generations, it will not be able to create workable policy and recommend effective Regulations. In these circumstances the implementation of the 2003 Act would be subject to severe delay.

e) Issues of Equity and Fairness

The Advisory Panel documentation has been developed in keeping with the spirit of the 2003 Act and therefore proposes a membership that seeks to balance membership drawn from legal deposit libraries and the publishing community, in order to gain a view that does not disadvantage one group or another when presenting advice to the Secretary of State. All recommendations for secondary legislation, and therefore the implementation of the 2003 Act, will be the subject of consultation before they are finalised.

3. Options

There are three options at this stage

Option 1

Do nothing

Option 2

The Joint Committee on Voluntary Deposit, or a successor body (now Joint Committee on Legal Deposit), to have an informal role in monitoring and reviewing the implementation 2003 Act and reporting to the Secretary of State

Option 3

Establish the Advisory Panel as outlined in the proposals in this document, taking into account the responses to consultation.

4. Benefits and Costs

Option 1

The creation of an Advisory Panel was announced in Ministerial statements in Parliament. The Advisory Panel is a prerequisite for progressing the implementation of the 2003 Act and making Regulations for the legal deposit of non-print material.

To fail to establish Advisory Panel would severely compromise the effectiveness of the 2003 Act, by impeding the formulation of Regulations, and potentially preventing non-print material being deposited except under the voluntary scheme. This carries 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, thereby contradicting both the letter and spirit of the 2003 Act.

This would significantly reduce the ability of the legal deposit libraries to systematically collect the national published output on a broad scale, restricting the statutory obligation to deposit material to printed works. 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.

Option 2

The proposal to implement the 2003 Act through a voluntary body was the original intent. However, as the 2003 Act progressed through Parliament, it became clear that only an established advisory body with a formal reporting line to the Secretary of State could provide the independence of advice required, given the complexity of the issues involved. No other solution can ensure transparency and effective governance as members of a voluntary body would not be required to adhere to a code of conduct and be accountable to the Secretary of State.

In order meet this criteria it is necessary to establish an Advisory Non-Departmental Public Body.

Option 3

It is the Government's view that establishing an Advisory Panel that is constituted in keeping with the spirit of the 2003 Act is the most effective method of seeking to extend legal deposit to non-print media.

The Advisory Panel will need to be sufficiently resourced in order to analyse the impact of extending legal deposit to different types of non-print media and produce robust recommendations on how and when this should be implemented through secondary legislation. At this stage the indicative costs have been assessed at a maximum of £100,000 per annum, to cover the Chair's remuneration; Members' travel and subsistence; and other areas such as research, consultation and legal advice. Provision for funding the Advisory Panel will be met by DCMS, and will be subject to a memorandum of understanding.

The costs of implementing any future Regulations would be assessed as part of regulatory impact assessments included in consultation prior to enactment and are not within the scope of this document.

5. Consultation with Small Business

Initial soundings with the publishing sector have not identified any disproportionate or negative impacts on small firms. As a result we do not intend to carry out stage one of the small firms impact test. We will be sending this consultation to a variety of trade associations in the publishing sector and should any as yet unidentified impacts or unintended consequences be identified, further investigations will be carried out in order to quantify the impact on small firms. We have discussed the proposals with the Small Business Service who are content with this approach.

6. Competition Assessment

As part of the RIA it is necessary to complete a competition assessment. This assesses the impact on competition of the proposals under consideration. In this instance, the consultation is seeking views on the constitution of the Advisory Panel, which does not have any direct effect on competition. When recommendations for secondary legislation are proposed the impact on competition will be considered under separate RIAs and consulted on prior to any Regulations being finalised.

7. Enforcement and Sanctions

Ministers may remove the Chair and/or individual Members if they fail to perform the duties required of them in line with the standards expected in public office. The Advisory Panel is subject to a review process and the Secretary of State may disband it if it is no longer deemed necessary to oversee the implementation of the 2003 Act.

8. Monitoring and Review

In accordance with Cabinet Office guidance for NDPBs the Advisory Panel is subject to review. This will determine whether the function of the Advisory Panel is still necessary, and whether the existing NDPB model is the best option for its delivery.

9. Consultation

As well as Government departments, we have consulted with a range of publishers and deposit libraries through the Joint Committee on Legal Deposit, and taken account of their views, in developing this document.

This document aims to extend the consultation to all those with an interest or stake in the legal deposit of published material. The results of this consultation will feed into the constitutional proposals for establishing the Legal Deposit Advisory Panel.

11. Comments on the RIA

Comments on any aspect of this partial RIA are invited, and can be submitted with comments on the consultation document, or separately, by 16 February 2005 to:

By email: legaldeposit@culture.gsi.gov.uk

By post:

Toby Nerval
Department for Culture Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

By phone:

020 7211 6174

LEGAL DEPOSIT ADVISORY PANEL

TERMS OF REFERENCE

The Legal Deposit Advisory Panel ("Advisory Panel") is a lower-tier Non-Departmental Public Body (NDPB). An NDPB is a body with a role in the process of national Government which is not a Government department or part of one, and operates at arms length from Ministers. Advisory NDPBs are generally set up to provide independent expert advice to Ministers and their departments on matters within their sphere of interest.

The primary purpose of the Advisory Panel will be to advise the Secretary of State on the timing and content of Regulations relating to legal deposit. The role of the Advisory Panel will be to:

- ♦ advise the Secretary of State on the content of regulations for the deposit of particular classes on non-print media, making recommendations for future secondary legislation as appropriate, in line with Ministerial undertakings made in Parliament;
- ♦ monitor and oversee the operation and implementation of the Legal Deposit Libraries Act 2003;
- ♦ execute all these responsibilities in accordance with the letter and the spirit of the 2003 Act;
- ♦ advise the DCMS as requested on the operation of the 2003 Act

Roles And Responsibilities

1. The Advisory Panel is an independent body operating at arms length from Government. The Advisory Panel may establish sub-committees or working parties to look in more detail at specific aspects of legal deposit; may commission or request reports; may co-opt Members when expertise is needed; and may publish its advice. The Secretary of State may seek the advice of the Advisory Panel on specific areas of work and may indicate which issues she would wish to see accorded priority.
2. The Advisory Panel is purely advisory; it has no formal responsibility for the administration of the 2003 Act, and it does not share the Secretary of State's statutory responsibilities.

Membership

3. The Advisory Panel will consist of a Chair and 14 Members. Members will be drawn from the publishing industry (total of 5 Members), the legal deposit libraries (total of 5 Members), and independent fields with relevant expertise (total of 4 Members). The Chair will be appointed by the Secretary of State.
4. Ex-officio appointments will be made to reflect the statutory framework of the 2003 Act. The British Library, the National Library of Wales, the National Library of Scotland, and the Digital Content Forum will hold ex-officio seats. Ex-officio seats will be tied to specific posts within each of these organisations.
5. The Secretary of State will make the remaining appointments: 2 Members from the legal deposit libraries; 4 Members from the publishing industry; and 4 independent expert Members through open competition, in accordance with the Office of the Commissioner for Public Appointments (OCPA) code of practice, adhering to the Nolan principles. The code of practice can be viewed on the OCPA website:
<http://www.ocpa.gov.uk/pages/downloads/pdf/codeofpractice.pdf>.
6. Organisations will be able to put forward more than one application for membership on the Advisory Panel, and applications will also be invited from individuals. These will be assessed against the role specification criteria, but no organisation will have more than one member on the Advisory Panel. Applications to open competition seats on the Advisory Panel from organisations that have an ex-officio appointment will not be considered.
7. Members of the Advisory Panel will be appointed initially for 2-4 years (in line with DCMS policy), renewable for a maximum of 10 years at the discretion of the Secretary of State, and subject to satisfactory performance. Ministers can normally remove individual Advisory Panel Members from office if they fail to perform the duties required of them in line with the standards expected in public office (OCPA regulations). Members may resign their appointment at any time with reasonable notice in accordance with the terms and conditions of appointment.

Role of Panel Members

8. Members must engage fully in collective consideration of the issues, taking account of the full range of relevant factors. The Advisory Panel Members may co-opt others to strengthen its expertise and experience on particular issues. Co-opted Members may be needed to give particular expertise if the Advisory Panel is unable to achieve this by other means or when it needs to resolve particular issues in relation to specific areas of non-print media. Co-option should be time limited and should not be used as a route to create permanent Members by other means.
9. Members must ensure, in conjunction with the Advisory Panel secretariat, that the Freedom of Information Act 2000 (including prompt responses to public requests for information) is adhered to; agree reports; respond appropriately to complaints, with reference to the Advisory Panel secretariat; and ensure that the Advisory Panel does not exceed its powers or functions.
10. Membership of the Advisory Panel does not preclude individuals or organisations making representations directly to the Chair.
11. Communications between the Advisory Panel and Ministers will generally be through the Chair.
12. Members will not be remunerated, but reasonable travel and subsistence will be reimbursed by DCMS in accordance with current policy for NDPBs.

Role of the Chair

13. The Chair will provide effective leadership and stewardship of the Advisory Panel. The Chair is responsible for ensuring that the Advisory Panel meets at appropriate intervals, and that minutes of meetings and reports to Ministers accurately record the decisions taken and, where appropriate, identify the views of individual Advisory Panel Members.
14. The Chair must ensure that new Advisory Panel Members are briefed on appointment (and that their training needs are considered). The Chair must also provide an assessment of Members' performance, on request, when they are considered for re-appointment to the Advisory Panel, or for appointment to the board of some other public body.
15. The Chair will be appointed for a term of four years. The appointment can be renewed once (only in exceptional circumstances can a Chair remain in post for more than eight years). Ministers may remove the Chair if s/he fails to perform the duties required in line with the standards expected in public office (OCA regulations).

Frequency of Meetings

16. The Advisory Panel will meet a minimum of three times a year in London, exact dates and frequency to be determined by the Advisory Panel.

Secretariat

17. DCMS will perform the secretariat function for the Advisory Panel with support and input from DTI. The role and responsibility of the secretariat will be agreed with the Advisory Panel Chair and will be subject to annual review; however in

order to preserve the independence of the Advisory Panel the predominant role of the secretariat will consist of administrative functions.

Funding

18. The Advisory Panel will be allocated an amount of funding, to be agreed by DCMS, to cover the Chair's remuneration; Members' travel and subsistence; and other costs such as research, consultation and legal advice.

Financial Controls

19. Expenditure will be made on behalf of the Advisory Panel by DCMS in accordance with a memorandum of understanding. This memorandum will be drawn up between DCMS and the Chair. Accountability for expenditure will remain with DCMS.

Quorum

20. The Chair will set a quorum for each meeting in order to ensure that any discussion or decided action comprises a view of all Members, consistent with the balance of the Advisory Panel.

Methods of reporting

21. The Chair of the Advisory Panel will submit minutes of each meeting to Ministers and the Secretary of State. A report will be submitted to the Secretary of State when required, but at least annually, on the Advisory Panel's progress and recommendations for implementing the 2003 Act. This report will provide transparent details of the process of making recommendations including the views of Members and others consulted, and how consensus and agreement was reached.

Review

22. The Advisory Panel will be reviewed periodically, in accordance with Cabinet Office guidance for NDPBs. This will determine whether the function of the Advisory Panel is still necessary, and whether the existing NDPB model is the best option for its delivery. The Secretary of State may disband the Advisory Panel if it is no longer deemed necessary to oversee the implementation of the 2003 Act.

Code of Practice

23. Advisory Panel Members must at all times observe the highest standards of impartiality, integrity and objectivity in relation to the advice they provide to Ministers. They should consider themselves accountable to Parliament and the public generally for the Advisory Panel's activities and for the standard of advice it provides.
24. The Secretary of State is answerable to Parliament for the policies and performance of this body, including the policy framework within which it operates.
25. All Advisory Panel Members must follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life (listed at paragraph 28). They must comply with this Code, ensure that they understand their duties, rights and responsibilities, and that they are familiar with the function and role of this body and any relevant statements of Government policy. They must not misuse information gained in the course of their public service for personal gain or for

political purposes, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations. They must not hold any paid or high profile unpaid posts in a political party, and not engage in specific political activities on matters directly affecting the work of the Advisory Panel. When engaging in other political activities, Advisory Panel Members should be conscious of their public role and exercise proper discretion.

26. All Advisory Panel Members should declare any personal or business interest which may, or may not be perceived by a reasonable member of the public to influence their judgement. This should include, as a minimum, personal direct and indirect pecuniary interests and should normally also include such interests of close family Members and of people living in the same household⁵. The register of interests should be kept up to date and be open to the public. A declaration of any interest should also be made at any meeting if it relates specifically to a particular issue under consideration, for recording in the minutes, whether or not a member withdraws from the meeting.

Personal Liability of Panel Members

27. Legal proceedings by a third party against individual Members of advisory bodies are very exceptional. A Panel Member may be personally liable if he or she makes a fraudulent or negligent statement which results in a loss to a third party; or commits a breach of confidence under common law or a criminal offence under insider dealing legislation; or if he or she misuses information gained through their position. However, the Government has indicated that individual Members who have acted honestly, reasonably, in good faith and without negligence will not have to meet out of their own personal resources any personal civil liability which is incurred in execution or purported execution of their advisory body functions. Advisory Panel Members who need further guidance should contact the Department for Culture, Media and Sport.

Standards in Public Life

28. The Chair and Members of the Advisory Panel are required to adhere to THE SEVEN PRINCIPLES OF PUBLIC LIFE as identified by the Committee on Standards in Public Life. These are

SELFLESSNESS

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

⁵ Indirect pecuniary interests arise from connections with bodies which have a direct pecuniary interest or from being a business partner of, or being employed by, a person with such an interest. Non-pecuniary interests include those arising from membership of clubs and other organisations. Close family Members include personal partners, parents, children (adult and minor), brothers, sisters and the personal partners of any of these.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public's interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

Department for Culture, Media and Sport - Public Appointments

Legal Deposit Advisory Panel

Role Specification: The Chair

1. Introduction

The Department for Culture, Media and Sport wishes to appoint an exceptional person as the Chair of the Legal Deposit Advisory Panel ("Advisory Panel"), which will advise the Secretary of State on the timing and content of Regulations relating to legal deposit.

1.1 About the Legal Deposit Advisory Panel

The setting up of the Advisory Panel was announced in Ministerial Statements during the passage of the Legal Deposit Libraries Act ("2003 Act") in both Houses of Parliament⁶. The 2003 Act is one of the first pieces of legislation worldwide which seeks to regulate for the deposit of non-print material. The 2003 Act defines the deposit regime for print works in the six legal deposit libraries (the British Library; the National Library of Wales; the National Library of Scotland; the Bodleian Library, Oxford; the University Library, Cambridge; and the Library of Trinity College, Dublin), but it is generic in relation to non-print publications, allowing for all current and future works to be included in the 2003 Act. Deposit of print publications, under the 2003 Act is already taking place; however there is no obligation for publishers of non-print material to deposit until Regulations are made. These Regulations will be subject to a consultation and economic assessment process and will be subject to affirmative resolution in both Houses.

The Advisory Panel will have a crucial role in the implementation of this historic Act; advising the Secretary of State on the scope, direction and implementation strategy, thereby helping to ensure that the substantial archival resources in the legal deposit libraries keep pace with contemporary publishing trends. The key tasks of the Advisory Panel will be to advise the Secretary of State on the content of regulations for the deposit of particular classes of non-print media, making recommendations for future secondary legislation as appropriate.

2. The Role of the Chair

The role of the Chair will be pivotal, setting the direction of the Advisory Panel with agreement of panel Members. The Chair will be expected to maintain a clear vision

⁶ Hansard 04/06/03: Col 14, 47, 48; 04/07/03; Col 678, 694, 712, 713; 12/09/03: Col 577, 578, 580.

of the strategic direction for implementing the 2003 Act, and formulate a plan of work to enable this to happen. Strong negotiating skills will be required, and an ability to drive through progress and resolution on complex issues, in order to provide the Secretary of State with sound advice, and enable regulations to be made. The Chair, with agreement of Members, will be able to commission research and determine when to establish sub-committees and when to co-opt Members to provide specific views and expertise. The Chair will be expected to build an effective Advisory Panel and develop effective working relationships with all parties affected by the 2003 Act, and those who have relevant expertise and experience. The Joint Committee on Legal Deposit in particular will be an important source of experience, expertise and advice.

The Chair will need to be a good communicator who can command the respect of a wide range of professionals with differing interests.

The Advisory Panel will be composed of the Chair and 14 Members with Members drawn from the legal deposit libraries and the publishing community, as well as those with expertise in other related areas. The Secretary to the Advisory Panel will not be a Member. The key challenge for the Chair is to ensure the Advisory Panel recommendations have the correct balance between the legitimate needs of the archive and the implications and costs for the businesses of publishers and other stakeholders.

3. Role Specification - Chair

3.1 Objectives

The Chair of the Legal Deposit Advisory Panel will:

- provide effective strategic leadership and manage a newly-formed Advisory Panel, including establishing working methods and developing a work programme;
- ensure that advice to the Secretary of State on the content of regulations for the legal deposit of non-print publications is in line with the Legal Deposit Libraries Act 2003 and that it represents consensus amongst the key stakeholders, in particular the legal deposit libraries, publishing industry and the devolved administrations;
- promote the work of the Advisory Panel and develop sustainable relationships with key stakeholders, including Government and the devolved administrations;
- ensure efficient and appropriate use of the Advisory Panel's resources; and
- chair Advisory Panel meetings and sub-committees as appropriate.

3.2 Personal Qualities

The successful candidate will have:

- a proven track record of negotiating and working constructively with parties with diverse interests to reach consensus;
- a proven track record of leadership and delivery at a senior level in the public or commercial sector;
- an understanding of the policy context and a commitment to addressing the issues facing the legal deposit libraries and publishing community;
- outstanding communication and representation skills; and
- highly developed analytical skills, an ability to deal with complex legal and technical issues.

3.3 Supporting information

Time commitment: around 12 days a year, including chairing a minimum of 3 Panel meetings

Remuneration: honorarium of £300 per day. Reasonable travel and subsistence costs will also be paid

Location: meetings to be held in London

Length of appointment: initial period of 4 years, which may be renewed for up to a maximum of 10 years at the Secretary of State's discretion.

Department for Culture, Media and Sport - Public Appointments

Legal Deposit Advisory Panel

Role Specifications: Members

1. Introduction

The Department for Culture, Media and Sport wishes to appoint ten exceptional people to the Legal Deposit Advisory Panel ("Advisory Panel"), which will advise the Secretary of State on the timing and content of Regulations relating to legal deposit.

1.1 About the Legal Deposit Advisory Panel

The setting up of the Advisory Panel was announced in Ministerial Statements during the passage of the Legal Deposit Libraries Act ("2003 Act") in both Houses⁷. The 2003 Act is one of the first pieces of legislation worldwide which seeks to regulate for the deposit of non-print material. The 2003 Act defines the deposit regime for print works in the six legal deposit libraries (the British Library; the National Library of Wales; the National Library of Scotland; the Bodleian Library, Oxford; the University Library, Cambridge; and the Library of Trinity College, Dublin), but it is generic in relation to non-print publications, allowing for all current and future works to be included in the 2003 Act. Deposit of print publications under the 2003 Act is already taking place; however there is no obligation for publisher of non-print material to deposit until Regulations are made. These Regulations will be subject to a consultation and economic assessment process and will be subject to affirmative resolution in both Houses.

The Advisory Panel will have a crucial role in the implementation of this historic Act; advising the Secretary of State on the scope, direction and implementation strategy, thereby helping to ensure that the substantial archival resources in the legal deposit libraries keep pace with contemporary publishing trends. The key tasks of the Advisory Panel will be to advise the Secretary of State on the content of regulations for the deposit of particular classes of non-print media, making recommendations for future secondary legislation as appropriate.

2. The role of Members.

Members of the Advisory Panel will play a key role in formulating the strategic direction for implementing the 2003 Act. They will be expected to build effective working relationships with all parties affected by the 2003 Act, drawing on their own

⁷ Hansard 04/06/03: Col 14, 47, 48; 04/07/03: Col 678, 694, 712, 713; 12/09/03: Col 577, 578, 580.

areas of expertise while maintaining an objective focus in order to reach a consensus and to ensure the Secretary of State is provided with sound advice.

For the Panel to benefit from understanding the broad range of issues arising out of non-print publishing and legal deposit we are looking for people with a combination of specific skills, knowledge and experience. We are seeking to balance the interests of the legal deposit libraries and the publishing community and include independent experts within the membership of the Advisory Panel.

The Advisory Panel will consist of a Chair and 14 Members; four of these Members will be ex-officio appointments, and the remaining Members will be appointed through open competition in accordance with OCPA Regulations. In order to ensure the Advisory Panel has a breadth of expertise and is constituted in a fair and balanced way, appointments will be made in accordance with the following model.

3. Role Specification – Members

3.1 Membership

The Advisory Panel will consist of a Chair and fourteen Members:

- Five Members will be from the publishing community, of which one will be an ex-officio appointment (Digital Content Forum), the remaining four to be filled by open competition
- Five Members will represent legal deposit interests and/or the legal deposit libraries, of which three will be ex-officio appointments (British Library, National Library of Scotland and National Library of Wales respectively), the remaining two to be filled by open competition
- Four Members will be independent of the deposit libraries and publishing industry, and will be appointed by open competition

3.2 Objectives

All Members of the Panel irrespective of method of appointment and interests will have parity, and will be expected to:

- play an active role in developing the strategic direction and implementation of the Legal Deposit Libraries Act 2003;
- use their expertise and knowledge to help formulate objective advice to the Secretary of State on Regulations for the legal deposit of non-print publications, which is in line with the 2003 Act; and
- work collectively to reach consensus, balancing the interests of the key stakeholders and the wider community.

Only one member from any one organisation may be on the Advisory Panel (includes those organisations holding an ex-officio post).

4. Open competition posts

Those Members appointed through open competition will be expected to meet the following criteria:

4.1 Personal qualities

All successful candidates will be expected to have:

- an understanding of the policy context and the role of Government therein;
- experience of working with diverse stakeholders and teams at a senior level;
- excellent communication skills; and
- preferably some experience of committee work, or working in an advisory capacity.

4.2 Publishers (4 posts)

Members will be selected from those active in the print and non-print, commercial and not-for profit sectors of the publishing industry, working in at least one of the following publishing areas:

- Newspapers
- Periodicals
- Academic Journals
- Books and e-books
- Web-based content
- Encyclopaedias and reference works
- Directories and information databases

In selecting Members, the intention is to achieve a spread of expertise across these areas.

In addition, candidates will be expected to have some of the following skills, knowledge and experience:

- Extensive experience of being active at a senior level in the publishing industry;
- Knowledge and strategic understanding of the legal deposit system and the implications of extending this to non-print material;
- A track record of working with deposit libraries, or a demonstrable desire to do so, and a commitment to legal deposit and its role in building up an inclusive national archive;
- Understanding of the technological impact of the extension of legal deposit to non-print material.

4.3 Libraries (2 posts)

One Member will be selected from the academic legal deposit libraries (Oxford/Cambridge/Dublin)

One Member will be selected from those who can represent legal deposit interests in Ireland (Irish Republic and Northern Ireland)

Both Members will be expected have the following skills, knowledge and experience:

- Extensive knowledge and strategic understanding of the legal deposit system and the implications of extending this to non-print material;
- A track record of establishing a constructive working relationship with the publishing community;
- Knowledge of the developing role of digital technology in the publishing industry; and
- Expertise in the archiving of digital material.

4.4 Independent (4 posts)

Members will be selected from those independent of the publishing industry or deposit libraries, and will be selected in accordance with the categories listed below:

- Information Technology
- Copyright/media law/intellectual property
- Accountancy, financial planning, economics

In addition to these categories the Advisory Panel would benefit from a Member who could represent the public interest, with an understanding of legal deposit, possibly involved in archiving material, or as a reader.

It would be beneficial if candidates also have an understanding of legal deposit and the evolving world of digitisation.

4.5 Supporting Information

Time commitment: a minimum of three meetings of one 1/2 day per year with other sub-committee meetings as necessary, specific details of which to be decided by the Chair. Time commitment will vary depending on membership of sub-committees but it is likely to be around 1 day a month.

Location of Meetings: London

Remuneration: posts are unpaid. Reasonable travel and subsistence costs will be paid.

Length of appointment: Initially for 2 or 4 years, renewable for a maximum of 10 years at the discretion of the Secretary of State.