Introduction

1.1 At the end of 1997 the Secretary of State for Culture, Media and Sport set up a working party, under the chairmanship of Sir Anthony Kenny, to advise on how an effective national archive of non-print material might be achieved. The working party was to take into account the need to minimise the burden on publishers, the need to prevent unauthorised use of deposited material, the archival value of the material, and the scope for securely networking deposited material between legal deposit libraries. He stated: "The Government believes that it is extremely important to ensure that material published in this country is incorporated into our national archive irrespective of the medium used. The arrangements for legal deposit, which are concerned primarily with published material in print form, underpin the nation’s academic, research, and educational sectors. We intend to ensure that these benefits extend also to material published in formats other than print."

1.2 The Working Party, which included representatives of publishers and other producers as well as of the legal deposit libraries, reported in July 1998. It concluded that in the longer term only statutory deposit could secure a comprehensive national published archive. The report lays out general principles for a legal deposit system for publications in different media, and spells out how they might apply to particular media such as microform, film, and electronic publications. It recommends that the archive should be a distributed one, including, but not necessarily restricted to, the six current legal deposit libraries.

1.3 The Secretary of State responded to the report in a Parliamentary answer in December 1998, ending: "I believe the report makes a convincing case for moving towards legislation for the legal deposit of non-print publications on the basis of minimum burden on publishers and minimum loss of sales. It will be necessary to do further work on definitions and the impact on business and I have asked Sir Anthony Kenny to take this forward through the medium of the technical group of library and publishing experts. Once that is done we shall move towards legislation.” He requested that in the meantime a code of practice for the voluntary deposit of non-print publications should be drawn up and agreed between publishers and the deposit libraries. A 'regulatory impact assessment’ of the costs and benefits of the statutory deposit of non-print publications should also be prepared before the drafting of the proposed legislation. Following his request this code of practice has been drawn up and agreed by representatives of the legal deposit libraries and publishing trade bodies.

1.4 The code of practice has been endorsed by the following organisations:

Department for Culture, Media and Sport

Publishing trade bodies: Publishers Association; Association of Learned and Professional Society Publishers; Periodical Publishers Association

Legal deposit libraries:

- British Library; National Library of Scotland; National Library of Wales
- University Library, Cambridge; Bodleian Library, Oxford; Trinity College Library, Dublin

Purpose of legal deposit

2. The purpose of legal deposit is to ensure that the nation's published output (and thereby its intellectual record and future published heritage) is collected systematically and as comprehensively as possible, both in order to make it available to current researchers within the libraries of the legal deposit system and to preserve the material for the use of future generations of researchers. Both purposes are of importance. The system dates back several hundred years and has been a vital element in preserving and making available the published record of previous generations for the researchers of today and the future.

3.1 The purpose of the voluntary scheme is to plug the growing gap in the national published archive ahead of eventual legislation to introduce the statutory deposit of non-print publications. It is also intended to act as pilot phase during which matters of definition, procedure and control can be agreed and their implementation monitored, allowing for review and refinement in the light of experience, in order to assist in the process of drafting effective and workable legislation. The code of practice is therefore not intended as,
nor expected by Government to be, a blueprint for legislation.

3.2 The scheme is voluntary and there is no legal obligation on publishers to comply with it. However, publishers are requested and encouraged to deposit their non-print publications following the guidelines below.

**Publications to be deposited**

**Place of publication**

4. Deposit is requested of United Kingdom publications. Within the terms of the Copyright Act of 1911 'publisher' is read as 'one who issues or distributes publications to the public'. Thus publications originally published abroad, but distributed in the United Kingdom are liable for deposit, as well as those first published in the United Kingdom. It is the act of issuing or distributing to the public in the United Kingdom which renders a work liable for deposit.

**Medium of publication**

5.1 The code of practice covers the deposit of United Kingdom non-print publications in microform and offline electronic media. The latter, also sometimes known as 'hand-held', 'portable' or 'packaged' electronic publications, are electronic publications issued on discrete physical digital media such as magnetic tapes, magnetic disks or, more commonly, optical disks of some kind, such as CD-ROM or DVD.

5.2 Online publications do not fall formally within the scope of this code of practice. Recommendations for arrangements relating to online publications which are substantially fixed at the time of first publication, and the online elements of hybrid offline/online publications, are dealt with in Annexe 1.

5.3 Continuously updated publications such as 'dynamic' databases are not addressed in the Code of Practice, nor the accompanying annexes, and are excluded from current proposals.

5.4 It is recognised that deposit of offline publications which require separately licensed software for their operation may present particular problems; it is recommended that the publisher obtains the necessary licence on behalf of the deposit library. Under the voluntary scheme the publisher is under no obligation to deposit if they are unable or unwilling to do this.

**Publications appearing in more than one medium**

6. Publications which appear with substantially identical content in more than one medium only need to be deposited in one medium. The choice of medium would be with the deposit library. For the time being, this would normally be print where available.

**Types of publication to be deposited**

7.1 The code of practice does not cover film, sound, or Ordnance Survey digital mapping products, which are subject to separate voluntary schemes.

7.2 Subject to the definitions and exclusions identified elsewhere in the code of practice, deposit is requested of all United Kingdom microform and offline electronic publications which are primarily text-based or which are intended as information rather than entertainment products.

**Exclusions from deposit**

8. Deposit is not required:

- if a publication substantially duplicates the content of a print publication from the same publisher already deposited;

- if a publication is published only for private internal use within an organisation;

- if a publication has already been deposited under a publishing agreement;

- if it is in a category of publications specified by the legal deposit libraries as not being required for deposit - e. g. computer software, computer games.

**Formats to be deposited**

9.1 Microforms should be deposited in a format suitable for end-user use, normally either microfiche or roll microfilm. Where multiple formats of the same content are published, the preferred format for deposit is 35 mm silver halide positive copies.
9.2 Offline publications should be deposited in the form in which they are made available to the public, together with any associated software, manuals and material which are also made available to the public to enable them to be used. Where multiple formats are published, the preference for deposit is IBM PC compatible format.

**Point at which publications should be deposited**

10.1 Microform publications need not be deposited until 6 copies have been sold in the United Kingdom.

10.2 Offline publications need not be deposited until 12 copies have been sold in the United Kingdom.

**Operative date**

11. The code of practice applies to new publications published after 4th January 2000. Given the significant gaps in the national published archive because of the earlier absence of deposit arrangements for non-print publications, publishers are encouraged also to deposit publications which were published before this date.

**Number of copies to be deposited**

12. As a minimum, one copy of all new microform or offline electronic publications should be deposited, normally to the British Library, who will issue a list of items received to the other deposit libraries and the Copyright Agent. The other deposit libraries may then each request, via the Copyright Agent, the deposit to them of an additional copy. Publishers are asked, at their discretion, to deposit such copies if requested by the Copyright Agent.

**Access arrangements for deposited publications**

13.1 For offline publications, if a single copy only is deposited, or if individual copies are deposited to each library, the normal level of access allowed will be to a single user at a time within the holding deposit library, across a secure intranet at designated terminals within an area only accessible to authorised users of the deposit library concerned. If not otherwise specified by publishers this level of access will be assumed to be the default. However, where publishers intend to deposit only one copy, the deposit libraries will request their permission to provide limited access across a secure network as in 13.2 b) below.

13.2 At the time of deposit publishers are requested to specify, via a standard form, which of the following levels of access they agree to for the publications concerned:

a) single user access within the holding deposit library via an intranet to a single authorised user at a time at designated terminals (if not otherwise specified this will be taken to be the default position);

b) for items for which they intend to deposit only a single copy, networked access across a secure network between the legal deposit libraries, at designated terminals in each library, either i) to a single user at a time across the whole network or ii) to a single user at a time in each library;

c) single user access within the holding deposit library at a standalone workstation.

13.3 The legal deposit libraries advise against this last approach, on grounds of preservation, because of the additional handling involved, and of security, because of the greater risk of loss or damage if the items have to be issued in Reading Rooms.

13.4 All wider access within or between individual libraries, or use for such purposes as document supply and Inter-Library Loan, are only permitted under explicit licence from the publisher and with the payment of fees and/or royalties set by the publisher.

**Further restrictions on access to deposited publications**

14. For certain categories of printed publication deposit libraries have been willing to agree restrictions or embargoes on access for a specified period. A mechanism will be put in place to agree similar arrangements relating to their non-print equivalent.

**Printing out from deposited publications**

15. Printing out is to be permitted only up to the same maximum limits as for photocopying from printed publications: no more than one chapter per book, or one article per journal issue, and in any case no more than 5% of the total extent of the work, for the purposes of private study and research.

Note: this follows the 'Fair Dealing' principles agreed between JISC and the PA. For certain types of publications such as databases 5% may be regarded by publishers as excessive. A maximum limit for the amount that may be printed out from such publications will be agreed.
**Copying for preservation purposes**

17. The long-term accessibility and usability of offline media such as CD-ROM cannot at present be assured. The deposit libraries therefore need to be able to copy the contents of offline publications to other media for preservation purposes. Unless expressly forbidden by the publisher, it will be assumed that the holding deposit library may copy a publication onto other media for preservation purposes only, subject to the preservation of the individual publication's identity and integrity. The copied version may not be used to provide user access.

**Annexes to the code of practice for the voluntary deposit of non-print publications**

**Annexe 1. Online publications**

A1.1 The draft version of the code of practice which was circulated for comment in May 1999 included proposals that certain types of online publications should be included within the scheme for voluntary deposit. Publishers who commented on the draft raised many concerns about the boundaries and definitions of the types of material which should be within scope of the scheme and about the practical, technical, and financial aspects of depositing and archiving online publications.

A1.2 The legal deposit libraries themselves cannot yet undertake large-scale archiving of a full range of online publication types, and recognise that the deposit and archiving arrangements for online publications are likely to be complex. There is as yet no consensus on the best technical solutions for long term digital preservation, although these are the subject of much current research and debate, nationally and internationally (see Annex 4).

A1.3 There is however wide recognition of the importance of ensuring that the content of online publications is archived and preserved for long term use beyond their commercial lifespan, and agreement that the legal deposit libraries are likely to be the institutions best suited to undertake this role. It is generally agreed that stand-alone formats such as CD-ROM are not likely to be favoured for much longer and that the trend is towards the online publication of content. Even if the format concerned is stand-alone, many such publications will have online components, frequently either an essential part of the content or the means by which it is updated.

A1.4 It is proposed that online publications be excluded from the scope of the formal code of practice for voluntary deposit of non-print publications, since neither publishers nor legal deposit libraries are yet ready to undertake the systematic deposit and archiving of online publications. It is however very important that, in parallel with the implementation and operation of the voluntary deposit scheme for microforms and offline electronic publications, activity should go on jointly between publishers and the legal deposit libraries to carry out trials of the deposit of certain types of online and hybrid offline / online publications, in order to explore issues, to test deposit and archiving procedures, to identify how the principles of deposit for online publications might need to vary from those for offline publications, and to provide guidance to DCMS to help in the framing of legislation addressing both offline and online publications. It is recommended that a steering mechanism for this activity be provided by the joint committee of publishers and deposit libraries described in Annexe 5 below.

A1.5 It is recommended that demonstrator projects should be established and carried out on the trial deposit and archiving of, and provision of limited access to, various types of online publications (primarily journals and monographs) and hybrid offline/online publications. It will be important to carry out projects which address the problems and technical issues relating to publications of a range of types and formats, both those which are relatively straightforward and some which are more complex. It is assumed that access restrictions would be similar to those defined for offline publications in the Code of Practice.

A1.6 A limited number of publishers are already co-operating with the CEDARS research project on digital archiving or with the legal deposit libraries on possible deposit arrangements for specific online publications. Other publishers of online publications who are willing to offer their publications for use in demonstrator projects are encouraged either to discuss matters initially with the British Library or one of the other deposit libraries (see contact list), or to let their relevant trade association know of their willingness to participate.

A1.7 The above is separate from activities and negotiations between individual deposit libraries and publishers on subscription to and licensing of online publications for the libraries' normal service needs.

**Annexe 2: Feasibility study on secure networking and access control mechanisms**

A2.1 It has been agreed that a feasibility study will be carried out for the design and implementation of a secure network between the legal deposit libraries to provide access to deposited electronic publications, and for the establishment
of the required control mechanisms for limiting networked access to the levels specified in the Code of Practice. The terms of reference will be agreed by the joint committee described in Annex 5, to ensure that publishers' concerns about security and control are taken into account.

A2.2 The feasibility study will be completed by the end of March 2000. Its findings will be made available to publishers' representatives and to DCMS to demonstrate proof of concept that the necessary security and control levels can be achieved.

Annexe 3. Regulatory Impact Assessment

A3.1 Since 1998 all proposals for new legislation are required to be supported by a Regulatory Impact Assessment. The production of such a document is required by DCMS to accompany its intended proposals for legislation on the deposit of non-print publications. The description below is summarised from the Cabinet Office guidelines for the production of a Regulatory Impact Assessment.

A3.2 "This is a short, structured document which is published with regulatory proposals and new legislation. It briefly describes the issue that has given rise to a need for regulation and compares various possible options for dealing with that issue. The costs and benefits of each option are identified, and quantified wherever possible, to assist informed public debate about regulation.

A3.3 The Regulatory Impact Assessment replaces the previous Compliance Cost Assessment and Regulatory Appraisal systems. Like them, it is intended to ensure that any regulation is i) necessary; ii) aimed at the right target, and iii) in proportion to the problem or issue being addressed. The Assessment should contain information under the following headings:

1. Title
2. Purpose and intended effect of the measure
   i) Identification of the issue and the objective
   ii) Risk assessment
3. Options
   i) Identification of options
   ii) Issues of equity and fairness
4. Benefits
   i) Identification of benefits
   ii) Quantification and value of benefits
5. Compliance costs for business, charities and voluntary organisations
   i) Business sectors affected
   ii) Compliance costs for a 'typical' business
   iii) Total compliance cost
6. Consultation with small business
7. Identification of any other costs
8. Results of consultations
9. Summary and recommendations
10. Enforcement, sanctions, monitoring and review"

A3.4 The British Library has agreed to commission the preparation of the required Regulatory Impact Assessment. This preparation will be carried out in consultation with the other legal deposit libraries and with publishers to ensure that publishers' concerns about their costs and the burdens on them, including potential loss of sales, are addressed fully. It is intended that the assessment will be submitted to DCMS by March 31st 2000.

Annexe 4. Preservation assumptions and strategy

A4.1 The issues relating to the long term preservation of and access to electronic publications are many and
complex. The Book Industry Communication study 'Digital preservation: an introduction to the standards issues surrounding the archiving of non-print material' provides an explication of the issues, and makes clear there are as yet no definitive answers, and that much further work is needed between libraries and publishers to identify effective and affordable ways forward.

A4.2 In the meantime, significant research into the different possible strategies for digital preservation continues to be carried out, in the UK by the CEDARS project, and internationally, particularly in North America, Australia and Western Europe, the results of which will be taken into account in the deposit libraries' strategies for digital preservation.

A4.3 There are at present four main approaches for the preservation of digital materials. All have both strengths and significant possible disadvantages. These are:

a) technology preservation, which requires the continued maintenance of the original hardware and software platforms on which publications are designed to be used;

b) refreshment, whereby the content is simply copied from one physical medium to another, to overcome the risk of failure of the original medium;

c) emulation, that is the imitation of the characteristics of current hardware and software platforms in future generations of computer environment;

d) migration, that is the transfer of data from one hardware and software configuration to another, without attempting to imitate the original.

A4.4 The legal deposit libraries do not believe that all the problems of long-term preservation can be resolved before deposit arrangements come into being. Rather, the voluntary phase will provide an opportunity for both libraries and publishers to explore jointly the practical, technical and economic aspects of digital preservation, and to agree and implement workable solutions.

A4.5 Initially, the libraries' strategy in relation to offline publications will be, unless expressly forbidden by the publisher, to make a preservation copy on receipt to a different medium (i.e. 'refreshment', as in (b) above). This preservation copy will not be used unless at some stage the original becomes unusable, and is not replaceable from its publisher. The original deposited copy of the publication will be used to provide reader access as described in the code of practice. It is assumed that technology preservation will allow current generations of offline publications to remain accessible for the foreseeable future.

A4.6 Consideration on whether emulation or migration will provide the better solution for long term digital preservation will await the results of CEDARS and other research, and will be the subject of continuing dialogue between libraries and publishers.

A4.7 The preservation of the content of certain types of online publications will be addressed in the proposed demonstrator projects described in Annex 1. The device and medium independence of such publications may make some of the issues relating to their preservation more straightforward than that of offline publications. Many publications are produced using common formats, such as SGML, HTML or PDF, which could be identified in a standard way at the point of deposit. This should make it easier to migrate and continue to use data across future generations of computer systems.

Annexe 5. Oversight mechanisms

A5.1 It has been agreed that a joint committee of representatives from publishers and deposit libraries will be set up to oversee the operation of the voluntary scheme and the parallel activities identified in annexes 1 to 3 to the code of practice above. The committee will meet quarterly.

A5.2 The committee will agree the monitoring and review mechanisms for the voluntary scheme, and will have the authority to agree changes to the details of the scheme in light of experience.

A5.3 It will act as a steering group in relation to the establishment and monitoring of the demonstrator projects for online publications, and will ensure that the Regulatory Impact Assessment addresses the concerns of both libraries and publishers.

A5.4 It will ensure that experience from the operation of the voluntary scheme, and the outcomes of the parallel activities, are communicated to DCMS to guide the framing of legislation.

A5.5 If the committee considers it to be necessary it will set up and steer the work of a separate joint technical subcommittee on networking, control and technical standards.