

## FEATURE ARTICLE

# The Legal Deposit Libraries Act 2003: a Mere Coming of Age or Trusted Guardian of the Nation's Treasures? <sup>1</sup>

**Abstract:** The UK's legal deposit libraries play a crucial role in ensuring the country's intellectual and literary output is systematically captured for the use and enjoyment of readers, listeners, and researchers, now and in the future. This article, by Kieran Lee Marshall and Kate Faulkner, summarily examines the legislation that underpins that scheme – the Legal Deposit Libraries Act 2003 and Legal Deposit Libraries (Non-Print Works) Regulations 2013. Over three parts, it explores the historical development of legal deposit in the UK; its operation in the context of the modern deposit library – using a university library as its primary paradigm; and considers ways in which the current law and policy may be developed to better support deposit libraries, the information professionals that run them, and the library and archive users who greatly depend upon barrier-free access to deposited resources. It concludes by outlining three areas on which prospective reform may focus.

**Keywords:** legal deposit; legal deposit libraries; Legal Deposit Libraries Act; Legal Deposit Libraries (Non-Print Works) Regulations

## INTRODUCTION

The Legal Deposit Libraries Act 2003 – the legislation through which UK publishers are required to deposit, with each of the six designated libraries, a copy of all domestically published work – has, over the past decade and a half, been the primary means through which much of the nation's intellectual heritage has found itself preserved for the next generation of researchers.<sup>2</sup> However, as the Act fast approaches its eighteenth birthday, it – along with the more recent Legal Deposit Libraries (Non-Print Works) Regulations 2013 – has come under increasing scrutiny over its capacity to adapt to the ever-changing needs of the modern deposit library.<sup>3</sup> The legislation has given rise to questions about the fundamental aim of legal deposit in the UK; whether the duty incumbent upon publishers to deposit with libraries goes far enough; whether legal deposits receive sufficient financial backing and Government support, along with concerns over whether the Act and Regulations properly provide for the needs of library and archive users, and the professionals charged with supporting them.<sup>4</sup>

Across three parts, this article summarily examines the UK legal deposit regime. It considers whether the Act and Regulations lack the legal maturity required to best serve the nation, or if youth is of little significance,

and the legislation and Agency set up to deliver the scheme are much-revered guardians of the nation's treasures, replete with the resources and powers required to safeguard the country's intellectual and cultural heritage into the future. The first section provides a potted history of the long and colourful past underpinning UK legal deposit, capturing how the scheme has developed from an opt-in arrangement with a publishing company in early seventeenth century, through to a fully functioning legislative operation in the twenty-first. Here it documents some of the principles that have remained core to its operation through to the present day. In the second section, the article explores the operation of modern legal deposit, both legally and practically. Owing to the limitations placed on a piece of this length, it situated its examination within a university deposit library, drawing on a sub-library specialising in law. Throughout, the article relies upon published insights offered by librarians, archivists, and other information professionals, who have examined the legal deposit scheme over the course of the past two decades or more.<sup>5</sup> In its third and final section, the authors reflect upon the various ways in which the present legal framework could be reviewed and reformed to better serve the mission of legal deposit; the needs of designated libraries and their staff, and, ultimately, the interests of library

and archive users or members of the public, whose understanding and critique of the social, cultural, and political age in which they live depends upon unfettered access to deposited resources.

## A BRIEF HISTORY OF LEGAL DEPOSIT

As Richard Ovenden, Librarian and Head of the Bodleian Library at the University of Oxford, so vividly described in his recent work, *Burning the Books*, organised bodies of knowledge have been the subject of coordinated attack throughout the course of human history.<sup>6</sup> However, even today, it has invariably been libraries, archives, and those who work in them, or those who are passionate about what they contain, that have found themselves at the forefront of attempts to defend, preserve, and save from destruction, the countless works – books, records, artefacts, audio-visual materials, and other miscellanea; in short, knowledge – which have been the focus of coordinated erasure or removal from the public domain.<sup>7</sup> As Ovenden aptly observes, regardless of form, access to knowledge plays a critical part in the functioning of a “healthy” society, as it does by enabling individuals to develop a sense of their history, social and cultural surroundings, and the intellectual milieu in which their nation’s identity is situated.<sup>8</sup> Indeed, little were the catholic monasteries of sixteenth century England to know that under the reign of Henry VIII, and his decree of English independence from theological clutch of the Holy See, that centuries worth of carefully assembled and well-preserved libraries were to be plundered to point of illumination, simply to satisfy Henry VIII’s aim of divorcing his wife and re-marrying Anne Boleyn.<sup>9</sup> And yet, while not the direct causal link, it was within the context of the upheaval and rebuilding that was to define this period – the late sixteenth and early seventeenth century – that the foundations of what we now know to be legal deposit began to take shape.<sup>10</sup>

In the mid to late 1590s Sir Thomas Bodley, a former English diplomat and scholar, had planned a return to Oxford, the city of his *alma mater*, retiring there in 1597. During this time, he had begun to act upon an idea he had to restore the library at the University of Oxford, given his desire to plug the ‘gaps ... in the preservation of knowledge’ and, with it, guarantee open access to important works of the day.<sup>11</sup> By 1598, Bodley was already in correspondence with the Vice Chancellor of the University, and set out plans for his development of a university library for “the public use of students” – after the University’s first library, which had run almost uninterrupted from 1320 to 1550, was also purged of “all traces of Catholicism”, having its entire collection removed – “some to be burnt”, including a “priceless” collection earlier donated by Henry V.<sup>12</sup> Refurbishment of the library rooms began in earnest in late 1598, allowing it to later re-open to students in November 1602 as

the “Bodleian Library”, having received some 2500 works – with many given by Bodley himself.<sup>13</sup> Though the library attracted contributions from many illustrious writers and collectors, it was in 1610 that Bodley managed to secure its long term stock, after brokering a “private and voluntary” agreement with The Stationers’ Company of London, whereupon they undertook to deposit with the Bodleian a copy of every book published by its members and registered at Stationers’ Hall,<sup>14</sup> thereby rendering the Bodleian the first of a handful of deposit libraries to be founded that century.

By the beginning of the 1660s the Licensing of the Press Act 1662 was introduced, which marked the first legal requirement that “every Printer shall reserve three printed Copies of the best and largest Paper of every Book new printed” – and any new editions thereafter,<sup>15</sup> ensuring that works were deposited with the Royal Library and “sent to the Vice-Chancellors of the two Universities respectively”, namely Oxford and Cambridge.<sup>16</sup> Several decades later, and legal deposit – though it was not yet called that – was to find itself covered by copyright laws, initially within the first ever Act of its kind, the Copyright Act 1709 – also known as the Statute of Anne.<sup>17</sup> The 1709 Act increased the number of deposit libraries to nine, and marked the beginning of the inclusion of legal deposit within every subsequent Copyright Act through the nineteenth century, including the Acts of 1801, 1814, 1836 and 1842.<sup>18</sup> Of course, between 1709 and 1842, the British Museum was then founded – a bold move insofar as “Oxford and Cambridge were, up to this point, considered the *defacto* national libraries”<sup>19</sup> – and in 1757 the contents of the Royal Library were moved to the Museum Library, along with the right to receive deposit items.<sup>20</sup> By 1814 there were officially eleven deposit libraries, with the Copyright Act of the same year introducing tighter regulations, and requiring items to be deposited within a month; the 1836 Act reduced the number of deposit libraries to five, while the 1842 Act required all items to be automatically deposited with the British Museum – “without prior demand”, though the remaining libraries were still required to request them.<sup>21</sup>

Following a succession of reforms between 1801 and 1842, it was not until the Copyright Act 1911 that any further reform of the deposit laws was undertaken. As Byford notes, on the whole “... publishers [supported] the aspirational ideals of legal deposit”, and thus duly complied.<sup>22</sup> Accordingly, the only notable change to follow the 1911 Act was the requirement that the National Library of Wales, founded in 1909, was also to be entitled to a copy of any published work, officially increasing the number of deposit libraries to six. The British Library was entitled to receive all items eligible for deposit within a month, with “the five other libraries [having the] right to claim within twelve months of publication...”.<sup>23</sup> However, in the decades that followed, there emerged a sense that “the comprehensiveness of the

national intellectual archive [had become] increasingly compromised” by reliance upon the 1842 and 1911 Acts, which by then were dated, and did not account for advances in the sorts of works being published, therefore meaning there were many items deposit libraries were ineligible to be claimed for.<sup>24</sup>

Fast forward to the mid-1990s and, amid growing pressure from the legal deposit libraries, The Secretary of State for the Department for Culture, Media and Sport, as it was then called, established a Working Party, chaired by the Oxford philosopher and former Chair to the Board of the British Library, Sir Anthony Kenny. After a major review, widely known as *The Kenny Report*, Sir Anthony concluded in a Green Paper that “...only a [revised nationwide] system of legal deposit would secure a comprehensive published archive”.<sup>25</sup> He went on to observe that legislation, at the time of writing, was “concerned primarily with published material in print form”, and required extending to include “material published in formats other than print.”<sup>26</sup> The Secretary of State at the time, Chris Smith MP, agreed, and stated that the “... report [made] a convincing case for moving towards legislation that [would, *inter alia*, account] for the legal deposit of non-print publications...”<sup>27</sup>

## MODERN LEGAL DEPOSIT AND THE UNIVERSITY LIBRARY

During the Parliamentary session 2002/2003, in a Private Members’ ballot, the Legal Deposit Libraries Bill was laid before the House of Commons. The Commons and Lords were subsequently informed that, without a wholesale reform in the deposit laws, the UK risked entering the twenty-first century relying on laws which contained “... no systematic or comprehensive arrangements for the collection and preservation of [print and] non-print publications”.<sup>28</sup> Even if print was already being captured, it was argued that a failure by legislators to act now would see the twenty-first branded as “... a cultural dark age that failed to archive a substantial and vital part of the nation’s published heritage...”.<sup>29</sup> By 14 March 2003, when the Bill had been put before the House of Commons for its second reading, Chris Mole, Member of Parliament for Ipswich, who had been responsible for the Private Members’ ballot, set out why the reforms were important, and what legal deposit aimed to achieve:

“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. We do this to make material available to current researchers in the libraries of the legal deposit system, and to preserve it for the use of future generations of researchers. Both purposes are important.”<sup>30</sup>

By 30 October 2003, following approval by both Houses, the Legal Deposit Libraries Act became law, and came into force in February 2004, replacing the arrangements contained within section 15 of the Copyright Act 1911. Enactment resulted in the set-up of The Agency for the Legal Deposit Libraries, which “operates on behalf of five of the UK’s designated deposit libraries” – which, of course, does not include the British Library.<sup>31</sup> Following requests from the deposit libraries, the Agency liaises with publishers and “requests and receives copies of publications for [re]distribution” to the relevant library, and is “maintained by... [support from the] libraries [, by ensuring] they receive [all] British and Irish publications [eligible for deposit].”<sup>32</sup>

The 2003 Act is made up of six parts and seventeen sections, thirteen of which are substantive. Section 1 places a duty upon any person who “publishes work in the United Kingdom” to deposit with any library entitled to receive or claim the same, to be provided at the publishers’ own expense. Section 2 extends the duty to new and alternative editions in the same medium, while section 3 outlines the deposit library’s right to enforcement, where the publisher fails to comply – though, in reality, this is almost never utilised, owing to the cost of litigation, and also not to sour relations between deposit libraries and the publishing sector.<sup>33</sup> Notably, it is the Agency that requests, receives and (re)distributes publications upon receipt of a request list from the deposit library, which of course carries with it a significant financial and environmental cost, insofar as works must first be posted to Scotland, only to then to be sent back out to libraries in England, Wales, Scotland and Ireland, rather than sent to the deposit libraries directly.<sup>34</sup>

Sections 4 and 5 of the 2003 Act cover the British Library’s and other deposit libraries’ entitlement to printed publications, and is something that was “carried over with only minor amendments” from the 1911 Act,<sup>35</sup> while non-print publications are covered by sections 6 to 8. Subsequent sections on regulation 11 to 13 make clear that “[t]he 2003 Act was drafted with [intention of there being] enough flexibility to cover the complex and diverse nature of the publishing industry... [and to ensure] that [new] forms of publication developed in the future can be incorporated into legal deposit, without the need to return to primary legislation.”<sup>36</sup> However, while this more recently resulted in the Legal Deposit Libraries (Non-Print Works) Regulations in 2013, or the Non-Print Legal Deposit (NPLD) Regulations as they are more commonly known, it has not since resulted in any further Regulations, despite the myriad ways in which this would be helpful, as practitioner-led research appeared to suggest.<sup>37</sup>

Whereas the 2003 Act covers traditional print publications, such as books (including print such as magazines, maps, sheet music and other such works), the NPLD Regulations were introduced to capture work that is intended primarily or exclusively to exist as an e-publication, even if this is later published in print. As Professors Paul Gooding, Melissa Terras, and Linda Berube note in

their AHRC funded study and White Paper, *Towards User-Centric Evaluation of UK Non-Print Legal Deposit: A Digital Library Futures*, the 2013 Regulations were enacted with a view to ensuring "... non-print publications published online and offline, including eBooks, eJournals, electronic mapping, the UK Web Archive and other electronic materials" would be added to the "systematic collection of born-digital publications" whilst protecting the interests of "rights-holders and content creators".<sup>38</sup> However, inevitably, as it is publishers who get to determine how works are deposited, many opt to "save money by substituting more costly print formats [of a work] for less costly online non-print formats".<sup>39</sup>

Though the above covers what the law requires, it does not capture some of the many issues and practical problems that deposit librarians, archivists, and, ultimately, service users, encounter whilst attempting to claim or make full use of deposit resources. Broadly speaking, and from a specialist university deposit library perspective, the challenges faced may be said to span one of three categories: *access and use*, *collection management*, and *consistency and content*.

### Access and use

In the advent of Kindle, Audible or Apple Books it is hardly surprising that ever more items are being offered for deposit by publishers as an e-resource, under the NPLD Regulations. However, access to, and the use of, such stock varies greatly across institutions. Unfortunately, the deposited resource is restricted to use on a limited number of computer terminals, and users must access materials at a specific terminal alone, thereby limiting the range of ways in which they may copy from the document (i.e. printing or note-taking). At other institutions, one may access the deposited resource at any networked computer terminal, but not copy or duplicate the resource in any way. Technology ensures that only one reader may access e-resource materials at a deposit library at any given time, which is both impractical and unsustainable, given the high turnover of library and archive visitors.

The Covid-19 pandemic uncovered a major flaw in such a system – restrictions on which are often handed down by publishers, and are not always determined by law – as the nationwide lockdown rendered access to physical terminals impossible, robbing staff and users of access to deposit resources entirely. Use of print legal deposit works proved a little more flexible, as materials could occasionally be loaned, scanned, or utilised remotely – usually by librarians and archivists scanning or working from home, while e-copies of library-purchased resources were shared on student virtual learning environments, copyright laws permitting.<sup>40</sup> Had librarians and archivists been able to access terminal-only resources remotely, then, much like the controlled scanning or copying in force for printed items, selected materials could have been shared, allowing research and learning to continue unimpeded. Fortunately, several publishers were

mindful to the overall shortcoming caused by restrictions, and widened access to some online materials. Further, some libraries, such as the University Library, University of Cambridge, trialled a new mode of printing sections or up to five percent of the work for pick-up through its Click and Collect scheme, even though these remain restricted in volume and duplication – the latter owing to publisher rights and copyright laws. Importantly, were libraries furnished with proper legal entitlements to resources, then, it would likely have meant that there was no need for them to rely on chance and the goodwill of publishers to assist service users.

### Collection management

Naturally, the presence of legal deposit hugely affects the nature of a library or archive's book selection, stock maintenance, storage capacity, and budgeting. Where an e-copy deposit of a work is offered, deposited, and catalogued promptly, this may enable speedier access, and for limited space and resources to be allocated to other areas. However, where a publisher opts to offer a print deposit of a work, this may take considerably longer to reach the library on redistribution – even if a print version is preferred – given request backlogs. In both cases, delay on part of the publisher often means users accessing an older edition of a work, when a newer or more updated version may be available and is eligible for deposit. Such a concern is particularly relevant for libraries or archives who are dependent on up-to-date stock, such as those in law or science, for example. Deposit libraries therefore often face the difficult challenge of deciding to buy in a new work, or recent versions of it – in order to maintain the standard and up-to-date collection its users will have come to expect – or risk users accessing out-of-date works available on open access shelves or terminals, but then falling short in the manner described. E-deposit copies of a work are typically offered in a restrictive manner, as described in the previous section, which sometimes means a library or archive will have to separately purchase a circulatory or duplicative print or e-copy, so users may access the work at other locations, or in formats other than the one presented. In many cases this is essential to maintain user equality – such as the making of enlarged copies for those with visual impairments, or access at terminals with specialist visual, listening, or speech software.

Crucially, if the type of deposit changes between editions, this presents an issue, unless the shift is coordinated and permanent. At the Squire Law Library, University of Cambridge, for example, where an older print edition of a work is available on the shelf for access, but a newer e-deposit version of the work has been provided by the publisher, then, like other libraries, it may sometimes be required to purchase a physical copy of the work for immediate use, with older editions being retained in stores. Expired editions may remain on the open shelves, but must then be labelled to warn readers that a more recent

edition is available at an e-deposit terminal. However, the process of checking and labelling is labour-intensive and costly for deposit libraries and their staff, and is potentially limiting for the end user too, unless a coordinated shift is made. With an ever-growing volume of works involved, such an approach is not sustainable. Further, as more becomes available via e-deposit, it reduces the likelihood of discovery through chance and open shelf browsing – risking a future with bookless libraries.

## Consistency and content

For many deposit libraries the issue of consistency with deposited resources is not just a matter of preference, it is about guaranteeing equality – the latter of which is addressed in the next section. There will inevitably be a variation in the mode of publication deposit, such as a book that was previously deposited in print, but is now available in newer editions or supplements as an e-deposit. However, a newly deposited e-resource will not always contain, save, or print out, the relevant page numbers, footnotes or headers, unlike when resources are available in PDF format or print, for example, potentially prevents use of the resource for scholarly purposes and communication by some readers, listeners, or researchers, who are unable to fully cite or credit the publisher or author, and therefore do not use the work to avoid the risk of plagiarism, and to comply with copyright laws. Indeed, the severity of the issue will depend on the quality of the resources being deposited, and their accessibility online (eg. a print or electronic book or music sheet), and also how the resource has usually been made available (eg. as an online or PDF – the latter of which would be preferred by most deposit libraries – owing to its versatile use and storage, but is invariably denied), since some e-resources will not also be available in the library in print form.

## DEVELOPING AND REFORMING LEGAL DEPOSIT

As noted within the opening section, “[l]ibraries [and archives form a] crucial [part of the] healthy functioning of [an open] society”.<sup>41</sup> As Ovenden vividly captured: [w]e ignore their importance at our peril.<sup>42</sup> Whereas libraries are ‘accumulations of knowledge’, built up over time, and often with a specific focus (eg. law or science), archives helpfully play a different role – systematically documenting “the action and decision-making processes of institutions and administrations”.<sup>43</sup> If this is so, then, legal deposits are arguably a much needed hybrid of these two worlds, and one that requires better protection, management and resources.

During the second reading of the Legal Deposit Libraries Bill at the House of Commons, MPs heard how its purpose, inter alia, 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”, whether that be for use by the public now or in the future.<sup>44</sup> Its “posterity-driven mission” places it apart from, and above, what Ovenden aptly records as the “abundance” of our age – quoting historian Roy Rosenzweig; an age in which global companies, such as Google and Amazon, for example, have a significant hand in the ever-growing commodification of social and cultural information, invariably with the aim of controlling behaviours, consumerism and, with it, our access to the knowledge – the latter of which is essential for one to develop a sense of, and to get on in, the world.<sup>45</sup> Legal deposits aim to achieve something different. They aim to serve “a public good”, through access to up-to-date information and research; to enable “access to [historic and newly] published works” across a range of subject areas or within a specialist genre; to encourage “national bibliographic control” through a “comprehensive archive of a nation’s published output”, and to allow the current and future generation of readers, listeners, and researchers to engage with the social, cultural, intellectual context of our age.<sup>46</sup>

With the above in mind, and in response to just some of many issues faced by deposit libraries – only a handful of which are explored above, the authors recommend that Parliament or the Law Commission ought to conduct a comprehensive review of incumbent legal framework, and bring forward the reforms necessary to ensure deposit libraries and their staff are better resourced and supported to provide for the many library and archive users and members of the public they are intended to serve. The authors suggest any review ought to consider three areas of concern:<sup>47</sup>

### Area one

Legislators ought to consider increasing the funding and powers allocated to The Agency for Legal Deposit Libraries or, in the alternative, reallocating its funding and powers to legal deposit libraries directly, where a reformed and better funded version of the current scheme does not suffice.

From the issues outlined, it is clear that the Agency does not have sufficient powers to act – efficient and inexpensively – on its own behalf, or on behalf of the libraries it represents, where publishers do not meet their obligations. A system of enforceable reminders and fines for repeatedly late or ignored deposits, along with powers to enable the Agency to easily undertake legal action – at minimum or no cost, should they ever be required to do so – would likely encourage publishers to respect the deposit laws, and the wider public the scheme is there to serve. In the case of NPLD, which is managed by the British Library, and then made accessible to other deposit libraries, similar powers could be made accessible to the ‘lead library’. Since the collaboration between deposit libraries is already successful in several areas (eg. the coordinated and allocated cataloguing of

deposit resources), an alternative may be to redistribute the Agency's increased powers, by dividing these between deposit libraries in the form of a consortium, such as to have a system of library-informed and library-led management of the scheme. Such a move may be regarded as undesirable, insofar as the Agency presently represents value for money, and otherwise operates well; further, it may be suggested that such a scheme already exists through The Joint Committee on Legal Deposit. However, the Committee – which acts as a bridge between legal deposit libraries and the publishing world – is not publicly accountable, and seeks to reach a “mutual agreement on questions of interpretation”, many of which may lean in favour of the publishing sector, rather than allowing for deposit libraries to legitimately assert their rights in the manner Parliament intended – namely, in the public interest.<sup>48</sup> A library-led and publicly accountable consortium may allow for the division of responsibilities based upon expertise or specialism (eg. libraries cataloguing and depositing resources according to subject or type of resource, or one library requesting and another overseeing the allocation of resources for direct delivery to deposit libraries – by print or electronically), along with a reallocation of enforcement and funding powers and an increase in legal deposit staffing.

Of course, the former suggestion would likely result in publishers being more prompt in responding to the deposit requests by the Agency or designated lead library. It would give the Agency or library the ability to act on behalf of another deposit library, where necessary, since the 2003 Act entitles only “the [deposit] library” to enforce under section 3(2). Where the alternative was pursued, this may have the benefit of reducing the administrative burden of liaison between libraries and the Agency, even if the initial cost was greater – with each deposit knowing which of the other deposits specialises in which role, resulting in an interactive and national network of legal deposits. As noted, this may not be desirable, since the Agency is an efficient administrative function; however, it presently lacks sufficient legal powers and financial backing, which it stands unlikely to gain, while the Joint Committee's operationalisation of legal deposit law and policy lacks public accountability. Where the Agency is to be granted further powers and funding, steps should be taken to ensure it has the right to reform the current policy on request, receipt, and (re)distribution, which would bring with it major financial and environmental savings. Such a move would see print resources – which are presently transported across the country to the Agency, only to be (re)distributed from Scotland to elsewhere in the UK and Ireland – delivered directly to the deposit libraries in question. Where the alternative is pursued, this may ensure such a change by default, and the foreseeable long-term efficiencies may be invested in improving user experience, and accessibility and equality – the latter of which is a major concern among deposit libraries, owing to the nature of the resources deposited, and is hugely under resourced

where user support services are concerned. In the latter respect, Gooding and others note, the “instrumental value of NPLD has not been fully realised”, and the authors argue this is true of the legal deposit scheme overall,<sup>49</sup> which a better funded and publicly accountable library-led scheme may yet put right.

### Area two

Where area one is only adopted in part, then, legislators ought to consider granting libraries and archives a wider range of enforcement powers, so that publishers may be compelled to deposit eligible resources, where reluctant or delayed.

The reluctance on the part of some publishers to deposit, or to simply ignore and not even respond to certain requests, relies on the knowledge that the Agency is ill-equipped to act, and library prosecution is unlikely, insofar as resources are often scarce and the last known pursuit was in 1812.<sup>50</sup> A system of enforceable reminders and fines for repeatedly late or ignored deposits, along with powers enabling the library to take easy low-cost or cost-free enforcement action, should they ever be required to do so, would likely improve the deposit arrangement of negligent publishers, and improve and flag up for praise the system of those who are already compliant. Greater accountability will ensure that librarians and archivists – who are invariably there to deliver a service of considerable public benefit – are not at the behest of slow and unwilling publishers, who have a legal duty to deposit, and will instead be better placed to invest their energies and resources in ensuring researchers are able to enjoy unfettered and barrier-free use of deposit library resources. In keeping with area one, the incumbent Government ought to consider the introduction of ring-fenced funding streams for deposit libraries, so as to ensure “... the nation's [intellectual and] published output... [is documented as] systematically and as comprehensively as possible...”, as the legislation originally intended it. The current funding model does not sufficiently provide the resources to ensure legal deposit libraries can operate consistently or to their fullest. Additional resources will ensure that enforcement action can be taken, where necessary, and that accessibility and equality is guaranteed for all service users with disabilities and additional needs – arrangements in respect of which vary greatly across deposits, at present.<sup>51</sup>

### Area three

Legislators ought to consider granting libraries and archives the right to choose the deposit resource format, in order to fit with the particular needs of the collection and users, but principally to maintain equality and accessibility.

The freedom for deposit libraries to request the format of deposit – or both, and to allow deposit libraries to use them in a greater number of ways – subject to certain guarantees which respect the rights of authors and

publishers – would greatly enhance the equality and accessibility of deposit libraries for all users, whether as a print or e-resource.<sup>52</sup> Since the format of deposit is determined by the publisher, this invariably leads to issues surrounding access and consistency – which libraries and archives are duty bound to correct, which also has a recourse on financing. Further equality barriers exist for those users who require the resource in a different format to the one presently offered (eg. enlarged print or with an adapted computer software). Allowing libraries to agree with publishers a co-ordinated and permanent shift from one mode of deposit to another – or to determine the particular choice and use of resources, as needed, will ensure library and archive users can enjoy full access to a collection, with coordinated adjustments to best support those with additional needs, as required by disabilities and equality law. Author and publisher concerns about the prospective misuse of fully accessible deposited resources may be mitigated by the resource only being available to those who commit to non-commercial use, and documents being marked accordingly (eg. work or prints or scans can be watermarked “non-profit use only”), which would prevent

and make unlawful the use of any resources in a commercial context. Resources may also be restricted to registered only use.

## CONCLUSION

This article summarily examined the legislation that presently underpins the UK legal deposit scheme – the Legal Deposit Libraries Act 2003 and Legal Deposit Libraries (Non-Print Works) Regulations 2013 – over three parts, detailing its historical development; operation in the context of the modern deposit library, and the ways in which current law and policy may be developed to better support the scheme, and the information professionals and members of the public that use them. In the third and final section, it recommends that Parliament or the Law Commission conduct a comprehensive review of incumbent legal framework, and bring forward reforms to address some of the issues and areas highlighted, to ensure deposit libraries and their staff are better resourced and supported to provide the essential public service they offer, and that such a scheme is protected into the future.

## Footnotes

- <sup>1</sup> The authors warmly welcome comments, replies, and questions, and are grateful to the reviewers for comments on an earlier draft. Any remaining errors are the authors own. The views expressed in this article are the authors own, not those of their employer(s), and the usual disclaimers apply. The law is stated as at 26 October 2020 and refers to that which is applied in England and Wales. The article does not constitute legal advice and citations are given using OSCOLA.
- <sup>2</sup> The British Library, *About Legal Deposit* (London: BL 2020) << <https://www.bl.uk/legal-deposit/about-legal-deposit> >> (accessed on 18 October 2020); Lyfrgell Genedlaethol Cymru / The National Library of Wales, *Cyflwyniad i Adnau Cyfreithiol / Introduction to Legal Deposit* (Aberystwyth: LGC / NLW 2020) << <https://www.library.wales/collections/activities/legal-deposit> >> (in English) (accessed on 18 October 2020). A list of the six legal deposit libraries can be found on the British Library webpage (above) or on the website of the Agency for Legal Deposit Libraries << <https://www.legaldeposit.org.uk/about.html#legal> >> (accessed on 18 October 2020).
- <sup>3</sup> For an accessible introduction to both see P. Pedley, *Essential Law for Information Professionals* (4<sup>th</sup> edn, Facet Publishing 2019) ch 4 and P. Gooding, M. Terras, and L. Berube, “Towards a User Centric Evaluation of UK Non-Print Legal Deposit: A Digital Library Futures – White Paper” (Glasgow, Edinburgh and Norwich: The University of Glasgow, Edinburgh and East Anglia 2019) ch 2 << <http://elegaldeposit.org/resources> >> (accessed on 23 October 2020), see too R. Ovenden, *Burning the Books: A History of Knowledge Under Attack* (John Murray 2020) chs 4, 13 and 15. The Department for Digital, Culture, Media and Sport and the Joint Committee on Legal Deposit recently carried out a review of the Regulations, see <<<https://www.gov.uk/government/publications/post-implementation-review-of-the-legal-deposit-libraries-non-print-works-regulations-2013>>> (accessed 26 October 2020).
- <sup>4</sup> The authors note should like to express their agreement with Professor Gooding and others (n 3) 4, and their description of the legal deposit regime as a “*posterity-driven mission*”, that is invariably there to support the provision of knowledge for “*scholarly and non-commercial*” use (the authors emphasis): see (n 3) chs 1 and 2.
- <sup>5</sup> The authors are active users of the University Library and Squire Law Library at the University of Cambridge, and therefore situate their understanding of the legal deposit scheme within the university context. They do not seek to represent the views of those who manage legal deposit at the University of Cambridge, or those who operate in other settings. Notwithstanding, in order to broaden the applicability and context of the discussion in this article, the authors have intentionally drawn upon materials concerning legal deposit outside of the university context.
- <sup>6</sup> Ovenden (n 3) Introduction, 3 ff.
- <sup>7</sup> Ovenden (n 3) Introduction and chs 2, 4, 13, 14 and 15 and Pedley (n 3) ch 4, 99.
- <sup>8</sup> Ovenden (n 3) Introduction, 5 and ch 7.
- <sup>9</sup> Ovenden (n 3) ch 4, 48. King Henry VIII decreed English independence from Rome following a refusal by Pope Clement VII to annul his marriage to Catherine of Aragon. Having earlier been excommunicated, Pope Clement VII died in September 1534, with Paul III becoming Pope within the next month. By November of the same year, the Supremacy of the Crown Act 1534 had received Royal Assent, and Henry VIII declared himself ‘Supreme Head of the Church of England’, marking the legislative beginning of the English Reformation.

- <sup>10</sup> Andrew Davis, “Legal Deposit in a Digital Age: An Overview” (2015) 10 (2) *ALISS Quarterly* 3 notes Sir Thomas Bodley “is [generally regarded as] the man responsible for all of this”, 3. However, as David Whitaker aptly mentions in “Nobody expects the Spanish Inquisition” (2001) 103 (8) *Library Association Record* 492, “the roots of legal deposit – now accepted as a national good – lie in the suppression of freedom of thoughts and expression”, 492. Moreover, major events in neighbouring countries on the continent during the same period formed a growing part of the wider wave of European enlightenment, and in what later in the 1600s would contribute to what is known as the “long-18th century”, circa 1685-1815. Closer to home, in the fifteenth and sixteenth century, numerous organisations and individuals were involved in attempts to preserve the nation’s output and “cultural longevity”: see, for example, The Society of Antiquities, *Our History* (London: SAL 2020) << <https://www.sal.org.uk/about-us/who-we-are/our-history/> >> (accessed on 23 October 2020), to cite but just one example of organised activity. Notwithstanding, it is evident Sir Thomas Bodley played a pivotal part in establishing what we now recognise to be legal deposit: see, for example, Ovenden (n 3) ch 4, 68 ff. However, the idea of legal deposit itself is thought to date back to early sixteenth century France: see Gooding et al (n 3) 6; J. Larivière, *Guidelines for Legal Deposit Legislation* (2000) (Paris: United Nations Educational, Scientific and Cultural Organization) << <https://unesdoc.unesco.org/ark:/48223/pf0000121413> >> (accessed on 23 October 2020) and C. Field, “Securing Digital Legal Deposit in the UK: The Legal Deposit Libraries Act 2003” (2004) 16 (2) *Alexandria* 87.
- <sup>11</sup> Ovenden (n 3) ch 4, 65-70.
- <sup>12</sup> The Bodleian Libraries, *History of the Bodleian* (Oxford: University of Oxford) << <https://www.bodleian.ox.ac.uk/about/history> >> (accessed on 18 October 2020) and Ovenden (n 4) ch 4, 68.
- <sup>13</sup> The Bodleian Libraries (n 12).
- <sup>14</sup> The Bodleian Library (n 12); Field (n 10) 68.
- <sup>15</sup> All legislation pre-1900 has been accessed via JustisOne ([www.justis.com](http://www.justis.com)), while legislation post-1900 has been accessed via the Legislation portal of the UK Government ([www.legislation.gov.uk](http://www.legislation.gov.uk)).
- <sup>16</sup> Licensing of the Press Act 1662, section 17.
- <sup>17</sup> Under the 1709 Act, section 5 required “That nine Copies of each Book or Books, upon the best Paper... [should be delivered up by]... the Printer and Printers thereof... [to the]... Warehouse-keeper of the said Company of Stationers, for the Time being, at the Hall of the said Company, before such Publication made, for the Use of the Royal Library, the Libraries of the Universities of *Oxford* and *Cambridge*, the Libratories of the four Universities in *Scotland*, the Library of *Sion College* in *London*, and the Library commonly called the Library belonging to the Faculty of Advocates at *Edinburgh* respectively...”.
- <sup>18</sup> Note, Davis (n 10) and J. Byford, “Publishers and Legal Deposit Libraries Cooperation in the United Kingdom since 1610: effective or not?” (2002) 28 *IFLA Journal* 292 appear to disagree over the total number of libraries under the 1801 Act, with the former suggesting nine and the latter suggesting eleven. Under the 1801 Act, section 6, publishers were required to deposit two further copies: “... in Addition to the nine Copies now required by Law to be delivered to the Warehouse-keeper of the said Company of Stationers, of each and every Book and Books which shall be entered in the Register Book of the said Company, one other Copy shall be in like Manner delivered for the Use of the Library of the said College of the Holy Trinity of *Dublin*, and also one other Copy for the Use of the Library of the Society of the King’s Inns *Dublin*...”.
- <sup>19</sup> Davis (n 10).
- <sup>20</sup> Byford (n 18). Note, Ovenden (n 3) ch 5 observes that the move made the British Museum the “national library in all but name” (the authors emphasis), with catalogues of its stock between 1813-1819 spanning seven volumes and estimating a collection of approximately 110,000 works, “more than fifteen times the size of the Library of Congress [in the United States]” 88. For a comparative view of legal deposit in other jurisdictions, see J. A. P. Cadavid, “Evolution of legal deposit in New Zealand: From print to digital heritage” (2017) 43 (4) *IFLA Journal* 379; S. Degerstedt and J. Philipson, “Lessons Learned for the First Years of E-Legal Deposit in Sweden: Ensuring Metadata Quality in an Ever-Changing Environment” (2016) 54 (7) *Cataloguing and Classification Quarterly* 468 and M. De Beer, M. Van der Merwe, L. Ball, and I. Fourie, “Legal deposit of electronic books – a review of challenges faced by national libraries” (2016) 34 (1) *Library Hi Tech* 87.
- <sup>21</sup> Copyright Act 1814, section 2; Copyright Act 1836, Preamble and section 2 – the effect on Oxford and Cambridge is unclear, since they were not included, nor does it seem their entitlement was repealed, which may render the total number of deposits as seven libraries, not five. Then, the Copyright Act 1842, sections 6-8, includes Oxford and Cambridge once more, and outline the new delivery method for the British Museum.
- <sup>22</sup> Byford (n 18) 294. Note, the only known enforcement case to be brought for non-compliance was *University of Cambridge v Bryer* (1812) 104 E.R. 1109, (1812) 16 East 317 at the Court of the Kings Bench. No subsequent enforcement appears to have resulted in court action (based on extensive searches carried out using Westlaw, LexisLibrary, and BAILLI) (last accessed on 26 October 2020), though the duty incumbent upon publishers under the Legal Deposit Libraries Act 2003 was affirmed in *MGN Ltd and others v Grisbrook* [2010] EWCA Civ 1399 (Sir Andrew Morritt C). However, Byford (n 18) suggests an opposing trend was true, and that many “defaulters” were pursued for compliance with the deposit laws, 293.



- <sup>23</sup> Byford (n 18) 293. Note that the National Library of Scotland would later be established in 1925 and, much like the transfer between the Royal Library and British Museum, all non-legal stock was transferred from the Faculty of Advocates to the new library: see National Library of Scotland, *Legal Deposit* (Edinburgh: NLS) << <https://www.nls.uk/about-us/legal-deposit> >> (accessed on 23 October 2020). However, upon enactment of the National Library of Scotland Act 1925 (later repealed and replaced by the National Library of Scotland Act 2012), the Faculty – previously a deposit library with the “four universities of Scotland” – remained entitled to claim a copy of relevant published works.
- <sup>24</sup> Pedley (n 4) and Byford (n 19), the former of whom observed that the Acts had “...ceased to be adequate to ensure the continuation of a comprehensive archive of the nation’s published material” 99.
- <sup>25</sup> Hansard, HC Deb, 14 March 2003, vol 401, col 578 (Legal Deposit Libraries Bill).
- <sup>26</sup> *ibid*
- <sup>27</sup> *ibid*, col 579
- <sup>28</sup> *ibid*, col 577
- <sup>29</sup> *ibid*
- <sup>30</sup> *ibid*
- <sup>31</sup> The Agency for the Legal Deposit Libraries, *About us* (Edinburgh: ALDL) << <https://www.legaldeposit.org.uk/about.html> >> (accessed on 23 October 2020). Though the British Library is entitled to receive items automatically under the Legal Deposit Libraries Act 2003, section 4, the Agency has nevertheless noted it has also had “responsibility for receiving legal deposit material” on behalf of the Library.
- <sup>32</sup> The Agency for the Legal Deposit Libraries (*ibid*). Note, Irish deposits are covered by Copyright and Related Rights Act 2000 (Ireland). Interestingly, as the Agency notes, it is maintained by support from deposit libraries. A library itself will usually receive Government funding, as the University of Cambridge does: see, for example, the University’s Annual Accounts << <https://www.finance.admin.cam.ac.uk/about/annual-accounts> >> (accessed on 23 October 2020). The University will then contribute to the Agency, and part-finances the running of the deposit for public access.
- <sup>33</sup> See here fn 23, see too fn 49.
- <sup>34</sup> The Agency for the Legal Deposit Libraries (n 31). Though the Agency’s process of request, receipt, and (re)distribution is well-established, each deposit library will have a designated contact or team who will oversee legal deposit materials – especially if the library performs another function other than acting as a deposit. A library will often therefore have to chase items if delayed or not received. However, in reality, library or archive staff are powerless to compel a publisher to deposit, or to take action, owing to the costs involved. Despite having access to software used by the Agency, to ensure an item has been requested and followed up, evidence suggests no case for non-compliance has been brought in England and Wales since 1812: see here the Legal Deposit Act 2003, section 3 and fn 23, above.
- <sup>35</sup> Pedley (n 3) 100.
- <sup>36</sup> *ibid*, 101.
- <sup>37</sup> See Gooding et al (n 3) and Davis (n 10) and L Burgess, “From Stored Knowledge to Smart Knowledge” (2014) 60 *SCONUL Focus* 3. While the NPLD Regulations sought make up for the gaps within the 2003 Act, and capture materials that the Act did not, the Regulations appear poorly drafted, and in many respects clash with disability, accessibility, and copyright legislation, as the 2003 Act does itself in part. Of course, though the Regulations contain a sunset clause, and were subject to a five-year review by the Department for Digital, Culture, Media and Sport and the Joint Committee on Legal Deposit in 2019, the Government’s focus on the UK’s withdrawal from the EU appears to have overshadowed the growing urgency for reform: see fn 4 for access to the review, and fn 49 on the role of the Committee.
- <sup>38</sup> Gooding et al (n 3) 4. Note, webpages are processed differently, as these are not captured by the NPLD Regulations in the same way as other press: see the British Library *UK Web Archive* project, which it operates in addition to the law: << <https://www.bl.uk/collection-guides/uk-web-archive> >> (accessed on 23 October 2020).
- <sup>39</sup> Pedley (n 3) 102.
- <sup>40</sup> During this period, and with the support of publishers, the Copyright Licensing Agency amended its licence conditions to assist in the provision of material for teaching during the lockdown (and beyond), for example; however, no flexibility could be provided with NPLD deposited materials, as the access restrictions are embedded in legislation. Greater flexibility in the access to resources only facilitates a better use of them, and across a much wider range of sources; hence, the lessons learnt during the pandemic on the benefits flexible access ought to form part of a wide review of user access to deposit resources.
- <sup>41</sup> Ovenden (n 3) Introduction, 5 and ch 7.
- <sup>42</sup> *ibid*, Coda, 223.
- <sup>43</sup> *ibid*, Introduction, 8.
- <sup>44</sup> See fn 25.
- <sup>45</sup> Ovenden (n 3) ch 13, see too Coda, 225 ff.
- <sup>46</sup> Gooding et al (n 3) 9, Degerstedt and Philipson (n 20), and R. Gibby and A. Green, “Electronic Legal Deposit in the United Kingdom” (2008) 14(1–2) *New Review of Academic Librarianship* 55.

<sup>47</sup> As previously noted, this article situates its understanding of legal deposit within a specialist library and university context, and is therefore limited in range. The authors recognise that any review and consultation by the Government, Parliament or the Law Commission would be required to consult on and field a much wider range of views, to ensure any review and reform of the law and policy in this area accounted for as wide a possible range of benefits to the other types of deposit libraries, which are likely to run differently to the setting discussed.

<sup>48</sup> The Joint Committee on Legal Deposit is "... a body composed of representatives from the deposit libraries and publishing trade associations [which, *inter alia*,] support cooperation between publishers and deposit libraries for the effective implementation of statutory and voluntary deposit arrangements." << <https://www.bl.uk/legal-deposit/joint-committee> >> accessed on 26 October 2020. Note, however, where there exists a dispute, the Committee employs a three-stage process of negotiation, mediation and arbitration, where disagreements arise over how to implement the legislation in a cooperative manner". Its proceedings are not publicly accessible, though its most recent review in collaboration with the Department for Digital, Culture, Media and Sport in 2019 was published online: see fn 3.

<sup>49</sup> Gooding et al (n 3) ch 5, 28.

<sup>50</sup> See fn 22.

<sup>51</sup> See eg Gooding et al (n 3) 7, 11, and 24-25.

<sup>52</sup> *ibid* 25

## Biographies

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