

Consultation Document

Proposal for Regulations implementing a Directive of the European Parliament and Council on the re-use of public sector information

Explanation of the wider context for the consultation and what it seeks to achieve

1. A European Directive that will set a minimum level of harmonisation of the rules and administration on the re-use of public sector information was published in the Official Journal on 31 December 2003, and is due to be implemented across the European Union by 1 July 2005. A Revised Partial Regulatory Impact Assessment (partial RIA) which is appended to this document proposes implementation of the Directive through adherence to best practice but underpinned by an independent dispute resolution process.
2. This will ensure that the public sector in England, Wales, Scotland and Northern Ireland is in compliance with the Directive. The Directive applies to the UK and the implementing Regulations will apply to England, Wales, Scotland and Northern Ireland.
3. The focus of the Directive is on re-use rather than access. Access regimes, as set out in Freedom of Information legislation, remain unaffected by the Directive.
4. We would welcome views on the attached draft Regulations together with a separate Explanatory Note, and the Guide to Best Practice that is intended to be issued in conjunction with the Regulations and inform how they should be properly implemented. The partial RIA sets out the background and arguments.

Issued: 22 December 2004

Respond by: 18 March 2005

Enquiries

5. The Regulations are being made by the Cabinet Office but policy responsibility for the negotiation of the Directive was shared by the DTI and the Cabinet Office. Therefore responses and queries can be addressed to **either**:

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Executive Summary

6. Public sector documents are a major resource for the information industry and others. Added value products based on such documents contribute to making the Information Industry work. The UK has already moved a long way down the path of assisting this process by making most central government information available for re-use at marginal cost, in practice usually for free. There are some clearly delineated exceptions to this charging policy, particularly for trading funds such as the Met Office and Ordnance Survey, but the rules are generally clear and well understood by both the public sector and industry. The UK has been recognised by the European Commission as being one of the most advanced, and coherent, member states in terms of its policies on the re-use of public sector documents.

7. Unfortunately, the position in the rest of Europe is very uneven. A few countries have a policy of making almost all documents freely available, others are more restrictive, and in others the practice varies considerably between public sector bodies within the same country. This makes the creation of pan-European products based on public sector documents difficult, expensive and frustrating. Since there are already inevitable linguistic challenges this puts the European information industry at a significant disadvantage to its American counterpart.

8. The European Directive on the re-use of Public Sector Information aims at achieving a minimum level of harmonisation across Europe. The timescale within which public sector bodies will have to respond to requests to re-use documents, for example, will have to meet the requirements of the Directive, and they will have to make the terms and conditions of re-use clear and readily available. This is putting best practice into operation.

9. In the previous consultation on implementation of the Directive two main options were put forward - first, a formal regulatory approach, and secondly, implementation through codes of best practice, both within a statutory framework. Responses from the private sector were firmly in favour of the regulatory approach, while public sector bodies considered the codes of practice option most appropriate. However, a third option was also proposed, which relied on implementation through codes of best practice but underpinned by an independent dispute resolution process.

10. The implementing Regulations incorporate this third option, and the primary purpose of this consultation is to elicit respondents' views on the draft Regulations and Guide to Best Practice.

11. The key questions asked towards the end of the consultation document are:

Question A: To what extent do respondents consider that the combination of best practice with an underpinning independent dispute resolution process represents a proportionate and effective way to implement the Directive in the UK?

Question B: is the combination of the Office of Public Sector Information (OPSI) and the [Advisory Panel on Public Sector Information](#) (APPSI) the most effective way to operate the dispute resolution process?

Question C: is the dispute resolution process outlined in the partial RIA appropriate and realistic, particularly in terms of the timescales for resolving disputes and the costs?

Question D: are the revised costs and benefits identified correct, and are they of the right order of magnitude?

Question E: is the attached Guide to Best Practice at the right level of detail and usability, bearing in mind that this will be a key reference document in the resolution of disputes? Any practical suggestions as to how the Guide can be improved would be welcome.

Question F: Have the synergies between Freedom of Information (FOI) and re-use of public sector information (PSI) been sufficiently addressed?

Question G: There is an obligation under the Regulations for public sector bodies to publish information asset lists. How can this obligation be met in conjunction with obligations under FOI?

Question H: In normal circumstances the maximum response time for applications to re-use documents is twenty working days, extendable in complex cases. This is consistent with FOI as required by the Directive. Does this present any practical problems either for the public or private sectors?

Question I: The Guide to Best Practice defines the term 'public task' as 'any activity of a public sector body which is prescribed by law or in which it engages as a result of common administrative practice'. Are these terms readily understood?

Question J: The draft Regulations provide a definition of what is meant by the term Public Sector Body (Regulation 3). Framing the definition in this way helps to provide clarity and some legal certainty as to which bodies are included under the Regulations, but, while it does go into some detail, it does not provide a comprehensive list. An alternative approach to this would be to include a less detailed definition in the Regulations and provide a comprehensive list of the bodies caught under the definition in the Guide to Best Practice. Such a list would include, for example, those bodies listed in Schedule 1 to, and section 23(3) of, the [Freedom of Information Act 2000](#) and Schedule 3 to the [Public Services Contracts Regulations 1993](#) (SI 1993/3228). An advantage of this approach would be that a comprehensive list of those bodies falling under the definition in the Regulations could be produced, maintained and amended quickly as new public sector bodies come into existence or as European case law develops without the formality of needing to amend the Regulations on each occasion. Which of these approaches would you prefer and why?

The proposals

12. The Directive will set a minimum level of harmonisation of the rules and administration across the European Union on the re-use of public sector information. The Directive can be downloaded from:

http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_345/l_34520031231en00900096.pdf

This consultation, and the accompanying draft Regulations, Guide to Best Practice and partial RIA, is primarily concerned with ensuring that the public sector in the UK implements most effectively and efficiently the new measures set out in the Directive, in a way that fully complies with the Directive without entailing disproportionate cost.

13. Public sector information is a prime content resource with substantial economic potential. The European Commission estimates that between 15 and 25% of total data used in e-commerce trading is based on public sector information. Establishing pan-European products and services based on public sector information is, however, a challenging task. Rules and practices for re-using the information tend to differ from one country to another. Although there are many good examples to be found, there remains considerable scope for improving the level of transparency and clarity about the rules for re-using public sector information throughout Europe. The lack of transparency, clarity and consistency can create difficulties for potential re-users and deter them from developing added value European products and services. In particular, small and medium enterprises that cannot afford any investment failure may be deterred from entering the market. In the US, by contrast, a clear and simple legislative framework enables the re-use of federal government information.

14. The establishment of a minimum set of principles, rules and standards across Europe could remove a significant element of this uncertainty and stimulate the growth of the

European information industry, leading to the creation of innovative new information products and services.

15. The Directive, and the draft Regulations, takes into account that certain public sector bodies depend on the income from the sales of their information resources to finance part of their operations. It does not impose any radical change to these charging policies. Full recovery of production and related costs for the production of a document by the public sector bodies involved is allowed for, including a reasonable return on investment. This ensures that government Trading Funds and other public sector bodies will continue to have the ability to publish commercially and sell information that they produce. The review of the Directive, to be undertaken after three years of its entry into force, will address in particular the overall impact of the Directive in increasing the availability of public sector information for re-use and its impact on public sector revenues.

16. The draft Regulations include provisions that will require action on behalf of public sector organisations, although within the UK central government and the Scottish Administration have already put into place mechanisms that meet most of the requirements of the proposal. It is anticipated that similar mechanisms and best practice can be extended to other parts of the public sector, and this is the main thrust of the partial RIA.

17. The draft Regulations aim to strike the right balance. It is important to deliver the benefits of the Directive to re-users. However, the impact on the public sector should be proportionate. For example, documents can be made available in their pre-existing formats and there is no obligation on the public sector to create documents which they would not otherwise have produced or to make them available in many different formats. There are some synergies with Freedom of Information legislation and the draft Regulations and Guide to Best Practice seek to build on such synergies where it makes sense to do so. It will be beneficial to both potential re-users as well as public sector bodies if opportunities for a joined-up approach are taken.

Responses to the Consultation on options for implementing the Directive

18. The September 2003 Consultation and partial RIA considered two main options for implementing the Directive.

(a) **Option 1 - Regulatory** A formal statutory regulatory framework, incorporating all the requirements in the Directive under-pinned with a formal monitoring process and appropriate sanctions for non-compliance.

(b) **Option 2 - framework of legislation, plus implementation through codes of best practice** such as the [Information Fair Trader Scheme](#)¹.

19. The main difference between Options 1 and 2 was that under Option 2 implementation would be via voluntary schemes rather than being imposed by law. A common private sector view was that the cost of establishing a regulatory body would be dwarfed by a) the savings arising from the private sector not having to take action through the courts; and b) the economic benefits that would accrue from the certainty that the Directive was properly implemented. Option 2 was considered by public sector bodies as offering greater flexibility without re-users being disadvantaged.

20. A third option emerged from the consultation, aiming to utilise the best practice being developed within the Office of Public Sector Information (OPSI)² and elsewhere but

¹ The Information Fair Trader Scheme is designed so that re-users of government information, whether in the voluntary, professional or commercial sectors can be confident that they will be treated reasonably and fairly by public sector information providers, and is the means by which the Office of Public Sector Information (OPSI) regulates Crown bodies to which the Controller has delegated authority to license the re-use of Crown copyright information. See www.hms.gov.uk/about/ifts/info_fair_trader.htm

incorporating an independent dispute resolution process, providing rapid low cost adjudication/resolution of disputes. It is this option that the draft Regulations are designed to bring into force.

21. Compliance of course would be mandatory, but compliance would be facilitated by offering a common framework of guidance, standard licences and charging mechanisms. This will provide essential support for bodies such as local authorities new to the issue, and will promote the necessary consistency of compliance. Means of redress are important, and Option 3 provides a means by which disputes can be settled without recourse to litigation (action through the courts is an expensive option that will not always be justified by the value of the complaint). Any dispute resolution process would need to be independent and so separate from any existing body providing support, guidance or issuing licences. The dispute resolution process envisaged will vary according to the nature of the dispute. Cases will be assessed and investigated by OPSI because it already has the experience and necessary expertise in licensing the re-use of public sector information within its remit to encourage best practice. For particularly complex cases, or where OPSI is itself the subject of a complaint, the matter would be referred to the [Advisory Panel on Public Sector Information](#) (APPSI), an independent non-governmental public body, which is well placed to act as a point of appeal. The decisions of OPSI and APPSI would not carry legal force but the decisions could be taken into account in any subsequent legal action. Such a non-legally binding procedure should ensure that the process represents a low cost and fast means of resolving disputes.

22. APPSI has a key role to play in the dispute resolution process because it:

- has the necessary standing within the information industry;
- is recognised as operating independently of government interests;
- represents both public and private sector interests;
- has the requisite specialist skills and knowledge;
- is an established non-departmental public body that works closely with OPSI but acts independently of it;
- has an existing complaints role in its terms of reference.

Question A: To what extent do respondents consider that the combination of best practice with an underpinning independent dispute resolution process represents a proportionate and effective way to implement the Directive in the UK?

Question B: Is the combination of the Office of Public Sector Information (OPSI) and the [Advisory Panel on Public Sector Information](#) (APPSI) the most effective way to operate the dispute resolution process?

Question C: Is the dispute resolution process outlined in the partial RIA appropriate and realistic, particularly in terms of the timescales for resolving disputes and the costs?

23. The partial RIA sets out our assessment of the costs and benefits of implementation. It also suggests the primary sectors affected by the proposal, and makes the assumption that there will be no significant additional cost to the private sector in implementing the Directive.

² The Office of Public Sector Information (OPSI) is part of the Cabinet Office incorporating Her Majesty's Stationery Office (HMSO).

24. The cost to the public sector, particularly outside central government, is acknowledged in the partial RIA. Nevertheless, in practice it is anticipated that the cost of implementing the Directive will not be excessive, and will involve adoption of existing best practices.

Question D: Are the revised costs and benefits identified correct, and are they of the right order of magnitude?

Question E: Is the attached Guide to Best Practice at the right level of detail and usability, bearing in mind that this will be a key reference document in the resolution of disputes? Any practical suggestions as to how the Guide can be improved would be welcome.

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How to respond and additional copies

25. Responses to the above questions, and any other comments or views, would be welcome by 18 March 2005.

26. Enquiries or responses can be sent by letter, fax or e-mail to the addresses in paragraph 5. Please feel free to pass this document on to anybody else with an interest in the subject, or send us their full contact details and we will arrange for a copy to be sent to them direct. Copies can also be downloaded at www.dti.gov.uk and www.hmsso.gov.uk

27. If you wish to comment or complain about the conduct of this consultation, please write to:

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Plans for making the results public

28. In accordance with criterion 6 of the Cabinet Office Code of Practice on written consultation, decisions taken in the light of the consultation shall be made public promptly with a summary of the views expressed (subject to respondents' requests for confidentiality) and reasons for the decisions finally taken.

29. The information you send us may need to be passed to colleagues within Cabinet Office and the DTI, and/or published in a summary of responses to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system unless you specifically include a request to the contrary in the main text of your submission to us.

30. We would also like to publish responses on HMSOnline at the end of the consultation period. We would be grateful if respondents could confirm that they are content for us to do so.