

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 6: Freedom of information and data protection**

#### ***Section 102: Release and publication of datasets held by public authorities***

387. **Section 102** amends the Freedom of Information Act 2000 (“FOIA”) which currently provides for access to information held by public authorities.
388. **Subsection (2)** amends section 11 of the FOIA (means by which communication to be made). **Paragraph (a)** inserts a new subsection (1A) which provides that where a request is made for information that is a dataset, or which forms part of a dataset, held by the public authority, and the applicant requests that information be communicated in an electronic form, then the public authority must, as far as is reasonably practicable, provide the information to the applicant in an electronic form that is capable of re-use, in other words a re-usable format.
389. There is no absolute duty for datasets to be provided in a re-usable format as it is recognised that, in some instances, there may be practical difficulties in relation to costs and IT to convert the format of the information. A re-usable format is one where the information is available in machine-readable form using open standards which enables its re-use and manipulation. If the applicant does not want to have the dataset communicated in electronic form, because for example, he or she wants the dataset in hard copy only, then the new duty in section 11(1A) will not arise. However, the public authority would still need to comply with the preference expressed, by virtue of the existing duty in section 11(1)(a) of the FOIA, and must provide the dataset in hard copy so far as it is reasonably practicable to do so.
390. **Paragraph (b)** amends section 11(4) by providing that the discretion which a public authority has in relation to the means by which communication of the information is to be made (which is already subject to the duty in section 11(1) of the FOIA) is now additionally subject to the new duty in section 11(1A).
391. **Paragraph (c)** of subsection (2) inserts new subsection (5) and provides for the definition of “dataset” for the purposes of the FOIA. The definition makes it clear that a dataset is a subset of information within the meaning of the FOIA. The definition provides that a dataset is a collection of information held in electronic form where all or most of the information meets the criteria set out in the following paragraphs of the new section 11(5).
392. The new subsection (5)(a) requires that the information in a dataset has to have been obtained or recorded by a public authority for the purpose of providing the authority with information in connection with the provision of a service by that authority or the carrying out of any other function of the authority.

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393. New subsection (5)(b) requires that the information is factual in nature and (a) is not the product of interpretation or analysis other than calculation, in other words that it is the ‘raw’ or ‘source’ data; and (b) provides that it is not an official statistic within the meaning given by the Statistics and Registration Service Act 2007 (“SRSA 2007”). Official statistics have been excluded from the definition of datasets as the production and publication of official statistics is provided for separately in the SRSA 2007.
394. New subsection (5)(c) requires that the information within datasets has not been materially altered since it was obtained or recorded. Datasets which have had ‘value’ added to them or which have been materially altered, for example in the form of analysis, representation or application of other expertise, would not fall within the definition for the purposes of new subsection (5). Examples of the types of datasets which meet the definition, though not a comprehensive list, will include datasets comprising combinations of letters and numbers used to identify property or locations, such as postcodes and references; datasets comprising numbers and information related to numbers such as spend data; and datasets comprising text or words such as information about job roles in a public authority.
395. *Subsection (3)* inserts new sections 11A and 11B into the FOIA which provide for the new duty to make a dataset available for re-use and the charging of fees. New section 11A(1) provides for the four criteria which must be met for the new section to apply: (a) that a person must have made a request for a dataset; (b) that the dataset requested includes a ‘relevant copyright work’; (c) that the public authority is the only owner of the ‘relevant copyright work’, in other words that it is not jointly owned with another party or that it is not owned in whole or in part by a third party; and (d) that the public authority is communicating the relevant copyright work to the requester under the FOIA, in other words that the dataset requested is not being withheld under one of the exemptions provided for in the FOIA.
396. New section 11A(2) provides that when communicating such a dataset to an applicant, the public authority must make the dataset available for re-use in accordance with the terms of a specified licence. New sections 11A(3) to (7) make provision for the charging of fees by public authorities for making datasets available for re-use. New subsection (3) provides that a public authority may charge a fee by virtue of regulations made under new section 11B and new subsection (4) preserves existing statutory powers for public authorities to charge a fee. New subsection (5) provides that where a public authority intends to charge a fee, it must give the applicant a “re-use fee notice”, which states the amount of the fee which must be paid before the dataset is available for re-use. New subsection (6) provides that where the public authority has given the applicant a re-use notice, it is not required to make the dataset available for re-use until the fee is paid in accordance with the notice; and new subsection (7) provides that if a public authority is exercising any existing statutory power to charge, the authority may combine the re-use fee notice with any other notice in accordance with the relevant statutory power being exercised.
397. New section 11A(8) adds definitions of “copyright owner”, “copyright work”, “database”, “database right”, “owner”, “relevant copyright work”, and “the specified licence” to section 11A of the FOIA. The definition of a “relevant copyright work” excludes a “relevant Crown work” and a “relevant Parliamentary work” which are separately defined.
398. Crown owned works are excluded from the requirement on public authorities to make datasets available for re-use under the terms of a licence specified by the Secretary of State. This is because the Controller of Her Majesty’s Stationery Office, who is appointed by letters patent from the Queen to manage Crown owned works, already has the authority to require these works and databases to be made available for re-use under the terms of a licence.
399. Parliamentary owned works and databases are excluded from the requirement on public authorities to make such datasets available for re-use because it would not be

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appropriate to make Parliament subject to a direction of the Secretary of State as new section 11A of the FOIA would in effect do by way of the specified licence in the code of practice under section 45 of the FOIA.

400. New section 11B makes further provision about the charging of fees by public authorities for making datasets (containing relevant copyright works) available for re-use. Subsection (1) confers a power on the Secretary of State to make regulations (subject to the negative resolution procedure) about the charging of fees in connection with making the datasets available for re-use in response to requests under the FOIA and publication schemes. Subsections (2) and (3) set out what the regulations may prescribe, such as when a fee may or may not be charged and how much that fee might be.
401. *Subsection (4)* amends section 19 (publication schemes) of the FOIA. *Paragraph (a)* inserts new subsections (2A) to (2F) into section 19 of the FOIA. Under new section 19(2A), publication schemes must include a requirement for the public authority to publish any dataset it holds, which is requested by an applicant, and any updated version of a dataset, unless the authority is satisfied that it is not appropriate for the dataset to be so published (new subsection (2A)(a)). It requires public authorities, where reasonably practicable, to publish any dataset under new subsection (2A)(a) in an electronic form which is capable of re-use (new subsection (2A)(b)). Subject to new subsection (2B), it also requires public authorities to make any relevant copyright work (if the authority is the only owner) available for re-use in accordance with the terms of the specified licence. New subsections (2B) to (2F) mirror new section 11A(2) to (7) by making equivalent provision in respect of publication schemes for the charging of fees by public authorities for making datasets (where they contain relevant copyright works) available for re-use.
402. *Paragraph (b)* of subsection (4) inserts a new subsection (8) into section 19 of the FOIA which provides definitions of “copyright owner”, “copyright work”, “database”, “database right”, “owner”, “relevant copyright work” and “the specified licence”. The definition of a “relevant copyright work” excludes a “relevant Crown work” and a “relevant Parliamentary work” which are separately defined.
403. *Subsection (5)* amends section 45 of the FOIA (issue of code of practice). *Paragraph (a)* amends the list in section 45(2) of the FOIA, which sets out the matters that must be included in the code of practice made under that section, to insert a new requirement for the code of practice to include provision relating to the disclosure by public authorities of datasets held by them. *Paragraph (b)* sets out the different provisions relating to the re-use and disclosure of datasets that may, in particular, be included in the code of practice under section 45 of the FOIA. *Paragraph (c)* amends section 45(3) of the FOIA so as to provide for the possibility of making more than one code of practice under section 45, each of which makes different provision for different public authorities.
404. *Subsection (6)* inserts into section 84 of the FOIA, which defines the terms used in that Act, a definition of the new term “dataset”.