

**EXPLANATORY MEMORANDUM TO
THE RE-USE OF PUBLIC SECTOR INFORMATION REGULATIONS 2005**

2005 No. 1515

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This instrument implements the EU Directive on the re-use of public sector information (2003/98/EC) (the Directive) and establishes a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by UK public sector bodies.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Directive does not affect laws on access but operates alongside them. In order to secure the interaction with domestic information access regimes that is envisaged in Recital 9 and Article 1(2)(c) it has been necessary in this instrument to deviate from the Directive and over implement Article 1(2)(c).

3.2 Regulation 5(2) implements Article 1 (2)(c) which provides that the Directive shall not apply to documents which are excluded from access by virtue of the access regimes in the Member States. We have taken this to mean that if a document (which is defined in this instrument to mean information and so for ease here I will refer to documents throughout) is not accessible under the Freedom of Information Act 2000 (FoIA), (or the Scottish equivalent (FoI(S)A)), the Environmental Information Regulations 2004 (or their Scottish equivalent) or the Data Protection Act 1998 or any other legislation which provides access, then this instrument does not apply to it. This would cover a document, for instance, which cannot be accessed under FoIA because compliance with the request would exceed the appropriate cost limit, as well as a document which is exempt from access under FoIA.

3.3 If Article 1(2) (c) were to be implemented as set out in the Directive two problems would arise.

3.4 First: The two Freedom of Information Acts (FoIA, at section 21 and FoI(S)A, at section 25) exempt from access documents which are reasonably

accessible to the applicant otherwise than under the Act (i.e FoIA or FoI(S)A). Under Article 1(2)(c), the Directive does not apply to any document which is exempt from FoIA or FoI(S)A. This would therefore, exclude from the scope of application of the Directive any document excluded from FoIA or FoI(S)A by virtue of being already “reasonably accessible”. Thus a document publicly available through a public sector body’s website, for example, would not be within the scope of application of the Directive. This is unacceptable in policy terms and if implemented would render this instrument largely redundant.

3.5 We have therefore, over implemented the Directive to include within the scope of application of this instrument such documents which would have been excluded by virtue of section 21 FoIA and section 25 FoI(S)A. To achieve this we found it necessary to draft regulation 5(2) to exclude from the scope of this instrument all documents other than those to which this instrument does apply. Therefore, regulation 5(2) identifies in paragraphs (a) to (c) those documents to which this instrument applies rather than (as per Article 1(2)(c)) identifying documents to which this instrument does not apply. Consequently, even if a document is exempt from FoIA or FoI(S)A because it is otherwise “reasonably accessible” (by virtue of either section 21 FoIA or section 25 FoI(S)A), it will still fall within the scope of this instrument.

3.6 Second: in practice, to re-use a document the applicant must have access to it. Where a document is not already accessible, a request for re-use must necessarily entail a request for access. The reverse is not however, true. A request for access does not necessarily entail a request for re-use and a person who is granted access to a document, for instance under FoIA, does not have an automatic right to re-use that document, but must make a distinct request to re-use it.

3.7 In a situation where a person requests re-use of a document which is not in his possession and not yet publicly available, the public sector body receiving the request must first determine the question of access before it can consider re-use.

3.8 If the body that receives the re-use request also ‘holds’ the document for the purposes of FoIA, the re-use request can be handled as a request both for access and for re-use since a valid FoIA request will exist.

3.9 However, in a situation where, for instance, the request is for a Crown copyright document, the re-use application will be to HMSO. If, as would be likely, HMSO did not itself hold the document, it could not determine whether the Directive was applicable (i.e. whether the document was excluded from access legislation) since in order to do so it would have to take substantive decisions on the detail of what is in effect an FoIA request without actually having either the document itself, or a valid FoIA request. Such decisions would be out-with the jurisdiction of the Information Commissioner, which is undesirable as a matter of FOI policy. It would also arguably change the national rules for access to documents as HMSO would have to make

decisions on access to documents which are not accessible through them under FoIA. This is stated in Recital 9 as not being the objective of the Directive.

3.10 To address this we have removed any need for a public sector body, in considering a request for re-use, to also consider whether or not the document in question is excluded from FoIA. To achieve this we have only applied this instrument to situations where the document is either in the possession of the person making the request or the person has the potential to obtain the document other than under FoIA (or other access legislation where the jurisdiction of the Information Commissioner applies). While this represents a divergence from the approach in the Directive, in practice this will still achieve its policy intention.

3.11 To illustrate this by reference to a situation where FoIA applies: if a request for re-use is made to a public sector body which also “holds” the document for FoIA purposes, that body can consider the logically entailed FoIA request. If the document is not excluded from FoIA (for example, an exemption does not apply or it does not exceed the prescribed costs limit), or is only excluded because it is reasonably accessible (i.e. section 21 FoIA applies), it will be provided to the applicant or he will be able to obtain it for himself, and it will come within the scope of this instrument by virtue of Regulation 5(2) (b) or 5(2)(c). If the document is excluded from FoIA (other than because section 21 applies), then it will not fall within the scope of this instrument.

3.12 If, on the other hand, the request for re-use is made to a body that does not ‘hold’ the document for the purposes of FoIA, this instrument will not apply to it. This is because for the instrument to apply the document must either be in the possession of the applicant or accessible to him other than through making an FoIA request for it (alternatively, the document must have been identified as being available for re-use under Regulation 5(2)(a)). This will mean that in practice the person requesting re-use will need to make an FoIA request to the body which does hold the document for FoIA purposes and, depending upon the outcome of the access request, will then have to make a fresh request for re-use to the body with the power to grant re-use thus completely separating the decision process under FoIA from that required under this instrument.

4. Legislative Background

4.1 This instrument implements the Directive, which came into force on 31 December 2003 and requires implementation by 1 July 2005. A transposition note is attached (Annex). The general approach has been to copy out the Directive although in some places provisions have been drafted to use more usual UK legislative language and to tie in with existing definitions. The Directive builds on and is without prejudice to UK access legislation. We have, therefore, adapted our approach to implementing the provisions on exclusions, time for compliance and charging to be consistent with existing

access legislation, in particular the Freedom of Information Act and the Environmental Information Regulations.

5. Scrutiny History

5.1 The Cabinet Office and the Department of Trade and Industry submitted EM 11093/02 on 4/9/02 on a proposed Directive of the European Parliament and of the Council concerning the re-use & commercial exploitation of public sector documents. The Commons European Scrutiny Committee considered it politically and legally important and cleared it (Report 2, Item 23697, Session 02/03). The Lords Select Committee on the EU did not report on it (Progress of scrutiny, 9/12/02, Session 02/03).

5.2 The Cabinet Office and the Department of Trade and Industry subsequently submitted an unnumbered (OTNYR) EM on 24 March 2003 on a proposed Directive of the European Parliament and of the Council 11093/02 of 17 July 2002 as revised in the Presidency text of 24 February 2003 to be presented to the Telecoms Council for political agreement on 27 March 2003 concerning the re-use and commercial exploitation of public sector documents. The Commons European Scrutiny Committee considered it politically and legally important and cleared it (Report 16, Session 02/03). The Lords Select Committee on the EU referred it to Sub-Committee B and cleared it by letter of 21/10/03 (Progress of Scrutiny, 27/10/03, Session 02/03).

5.3 A short signed Explanatory Memorandum (7644/03) was submitted by the Cabinet Office and the Department of Trade and Industry on 16 April 2003 which addressed the amended proposed Directive reflecting the Commission's response to the amendments tabled by the European Parliament. The EM was considered by Sub-Committee B in the House of Lords Select Committee on the EU and was cleared by letter of 21/10/03 (Progress of Scrutiny, 27/10/03, Session 02/03) at its meeting on 6 May 2003. The House of Commons European Scrutiny Committee considered this not politically or legally important and cleared it (Report 19, Item 24382, Session 02/03).

5.4 A further EM dated 7 November 2003 was submitted jointly by the Cabinet Office and the Department of Trade and Industry on the Opinion of the Commission on the European Parliament's amendments to the Council's common position on this proposal. The Commons European Scrutiny Committee considered it legally and politically important and cleared it (Report 37, 02/03). The EM was cleared by the Chairman of the Lords Select Committee on the EU at his sift on 11 November 2003 (sift 1159).

6. Extent

6.1 This instrument applies to all of the United Kingdom.

7. European Convention on Human Rights

Not applicable

8. Policy background

8.1 The impetus behind the Directive arose from the recognition that public sector information is a valuable information resource that could be used by the private sector to develop value added products and services. The removal of barriers to re-use will act as a stimulus to the information and publishing industry in Europe so providing significant economic opportunities and enhance job creation across Europe. An additional benefit would be to improve the flow of information from the public sector to the citizen.

9. Impact

9.1 A Regulatory Impact Assessment is attached to this memorandum.

9.2 The obligations in this instrument will have limited impact on the public sector. This is set out in detail in the attached Regulatory Impact Assessment.

10. Contact

10.1 Jim Wretham at the Cabinet Office Tel: 01603 723001 or e-mail: jim.wretham@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPPOSITION NOTE

Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information

These regulations do more than is necessary to implement the Directive including stipulating what form a request must take (regulation 6) and providing for a complaints procedure (regulation 17) and a non-binding dispute resolution procedure which are available to an applicant (regulations 18 to 21).

In this table, the following definitions apply:

“Directive” means Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information;
 “Guide” means the Guide to the Regulations and Best Practice 2005;
 “PSB” means public sector body, as defined by Regulation 3;
 “Regulations” means the Re-use of Public Sector Information Regulations 2005.

Articles	Objectives	Implementation	Comments
1(1)	This Directive establishes a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the Member States.	Minimum set of rules in UK in the Regulations.	
1(2)	This Directive shall not apply to:	Regulation 5 contains exclusions from the Regulations	
(a)	documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules as defined in line with common administrative practice in the Member State in question	Regulation 5(1)(a)	
(b)	documents for which third parties hold intellectual property rights	Regulation 5(1)(b)	
(c)	documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of: - the protection of national security (i.e. State security), - statistical or commercial confidentiality	Regulation 5(2)	Over implementation is required in order to address the relationship between information access legislation and re-use. If we had not over implemented this provision all information exempt from the Freedom of Information Act by virtue of being “accessible to the applicant by other means” (for instance all publicly available

			information) would have been excluded from the scope of the Regulations.
(d)	documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit	Regulation 5(3)(a) and (4)	“Public service broadcasting remit” has been clarified for UK purposes
(e)	documents held by educational and research establishments, such as schools, universities, archives, libraries and research facilities including, where relevant, organisations established for the transfer of research results	Regulation 5(3)(b)	
(f)	documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres	Regulation 5(3)(c)	
1(3)	This Directive builds on and is without prejudice to the existing access regimes in the Member States. This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to obtain access to the documents.	First sentence: Regulations 5(2), 8(2) and 15(4) Second sentence: Regulation 5(5)	Regulation 15(4) is included to address the relationship between information access legislation and re-use
1(4)	This Directive leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC	Implementation unnecessary	
1(5)	The obligations imposed by this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention and the TRIPS Agreement.	Implementation unnecessary	
2	For the purpose of this Directive the following definitions shall apply:		
2(1)	“public sector body” means the State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several bodies governed by public law	Regulation 3	

2(2)	<p>“body governed by public law” means any body:</p> <p>(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and</p> <p>(b) having legal personality; and</p> <p>(c) financed, for the most part by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law</p>	Regulation 3(1)(w)	Recital (10) of the Directive points towards public procurement directives (92/50/EEC, 93/36/EEC, 93/37/EEC and 98/4/EC) for the source of definitions; this therefore, reflects UK implementation of those Directives.
2(3)	<p>“document” means:</p> <p>(a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording);</p> <p>(b) any part of such content</p>	Regulation 2	Computer programs are deliberately excluded to reflect what we consider to be the intended meaning of document, as expressed in Recital (9) of the Directive
2(4)	<p>“re-use” means the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use.</p>	Regulations 2 and 4	<p>We have changed the word “exchange” to “transfer for use” as we believe that it was intended to cover a one-way transfer from one PSB to another for the purpose of the PSB using the document.</p> <p>This has also been elaborated because it seemed illogical that the transfer of documents for use between PSBs would not constitute re-use but those transferred for use within a PSB would.</p>
3	<p>Member States shall ensure that, where the re-use of documents held by public sector bodies is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV. Where possible, documents shall be made available through electronic means.</p>	<p>First sentence: Regulation 7.</p> <p>Second sentence: Regulation 11(2).</p>	

4(1)	Public sector bodies shall, through electronic means where possible and appropriate, process requests for re-use and shall make the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a reasonable time that is consistent with the timeframes laid down for the processing of requests for access to documents.	Regulation 8(1) to (3), (4)(b) and (c) Regulation 10 ensures that the procedure for processing a request is capable of being carried out by electronic means where possible and appropriate	Although no provision has been made for extension of the twenty working day limit under the Freedom of Information Act for purely "extensive or complex" requests, Article 4(2) of 2003/98 anticipates that such requests would warrant an extension in the context of Member States with no existing access regime. As stated in Article 1(3), this Directive builds on to the existing access regime in Member States. We therefore, consider that this is a reasonable approach which is consistent with the time frames laid down for the processing of requests for access to documents.
4(2)	Where no time limits or other rules regulating the timely provision of documents have been established, public sector bodies shall process the request and shall deliver the documents for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a timeframe of not more than 20 working days after its receipt. This timeframe may be extended by another 20 working days for extensive or complex requests. In such cases the applicant shall be notified within three weeks after the initial request that more time is needed to process it.	Implementation unnecessary because Article 4(1) applies.	
4(3)	In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the basis of the relevant provisions of the access regime in that Member State or of the national provisions adopted pursuant to this Directive, in particular Article 1(2)(a), (b) and (c), or Article 3. Where a negative decision is based on Article 1(2)(b), the public sector body shall include a reference to the natural or legal person who is the rights holder, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material	The possibility of responding by refusal of the request is introduced in Regulation 8(4)(a). Regulation 9(1) and (4) cover the notification of refusal to the applicant.	We consider that a document may not necessarily be obtained from the licensor, where a third party owns the relevant intellectual property rights. We have therefore, widened it so that the name of the person from whom the document is obtained should be identified to the applicant. For reasons of certainty, all notifications should be provided in

			writing.
4(4)	Any negative decision shall contain a reference to the means of redress in case the applicant wishes to appeal the decision.	Regulation 9(3)	
4(5)	Public sector bodies covered under Article 1(2)(d), (e) and (f) shall not be required to comply with the requirements of this Article.	Regulation 9(2)	
5(1)	Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible and appropriate. This shall not imply an obligation for public sector bodies to create or adapt documents in order to comply with the request, nor shall it imply an obligation to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.	Regulation 11(1), (2) and (3)(a) and (b)	
5(2)	On the basis of this Directive, public sector bodies cannot be required to continue the production of a certain type of documents with a view to the re-use of such documents by a private or public sector organisation.	Regulation 11(3)(c)	
6	Where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.	Regulation 15(1) to (3)	We consider that the total income from supplying and allowing re-use means the total income from the charge, since that is what the charge will cover.
7	Any applicable conditions and standard charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible and appropriate. On request, the public sector body shall indicate the calculation basis for the published charge. The public sector body in question shall also indicate which factors will be taken into account in the calculation of the charges for atypical cases. Public sector bodies shall ensure that applicants for re-use of documents are informed of available means of redress relating to decisions or practices affecting them.	First sentence: Regulation 15(5), 16(1)(a) and (b) and (2) Second sentence: Regulation 15(6) Third sentence: Regulation 15(7) Fourth sentence: Regulation 16(1)(d)	

8(1)	Public sector bodies may allow for re-use of documents without conditions or may impose conditions, where appropriate through a licence, dealing with relevant issues. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.	Regulation 12.	
8(2)	In Member States where licences are used, Member States shall ensure that standard licences for the re-use of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage all public sector bodies to use standard licences.	Standard licence terms are available on HMSOnline at: http://www.opsi.gov.uk/psi/psi-freellicence.doc The Guide clearly expresses the benefits to PSBs of using these.	
9	Member States shall ensure that practical arrangements are in place that facilitate the search for documents available for re-use, such as asset lists, accessible preferably online, of main documents, and portal sites that are linked to decentralised asset lists.	Regulation 16(1)(c) and (3)	
10(1)	Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use.	Regulation 13(1)	
10(2)	If documents are re-used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.	Regulation 13(2)	
11(1)	The re-use of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights.	Regulation 14(1) and (6)	
11(2)	However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public.	Regulation 14(2) to (4)	
11(3)	Existing exclusive arrangements that do not qualify for	Regulation 14(5)	

	the exception under paragraph 2 shall be terminated at the end of the contract or in any case not later than 31 December 2008.		
12	<p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2005. They shall forthwith inform the Commission thereof.</p> <p>When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>Regulation 1</p> <p>Explanatory Note</p>	
13(1)	The Commission shall carry out a review of the application of this Directive before 1 July 2008 and shall communicate the results of this review, together with any proposals for modification of the Directive, to the European Parliament and the Council.	Implementation unnecessary	
13(2)	The review shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, as well as further possibilities of improving the proper functioning of the internal market and the development of the European content industry.	Implementation unnecessary	
14	This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Union</i> .	Implementation unnecessary	
15	This Directive is addressed to the Member States.	Implementation unnecessary	

Regulatory Impact Assessment: Regulations Implementing in England, Wales, Scotland and Northern Ireland a Directive of the European Parliament and of the Council on the re-use of Public Sector Information June 2005

1. This is a final Regulatory Impact Assessment (RIA) on the implementation in the United Kingdom of a Directive of the European Parliament and of the Council on the re-use of public sector information. This RIA updates the earlier Partial Regulatory Impact Assessments issued as part of the September 2003 and December 2004 consultations. A summary of the responses to the December 2004 consultation is provided at Annex A. The results of the earlier consultation can be accessed at <http://www.opsi.gov.uk/advice/psi-regulations/consultations/directive-consultation.htm>

Purpose and Intended Effect of Measure

2. The Directive aims to achieve harmonisation across the European Union of the rules and administration on the re-use of public sector information. This RIA assesses the costs and benefits of the implementation of the Directive through the attached draft Regulations, informed by the Guide to the Regulations and Best Practice. The aim of the Directive is to enable the Information Industry to re-use public sector information to realise better its full economic value with benefits for customers, companies re-using the information and the public sector bodies making it available. It will facilitate the functioning of the market for public sector information, difficulties which are considered to have led to a substantial shortfall in the full realisation of the socio-economic value of public sector information.
3. There is an important distinction between access to information and the right to re-use. For example, members of the public might purchase a copy of an official government publication from their local bookshop but if they wished to publish the text in a commercial product or service they would require permission, usually in the form of a licence, to do so. The focus of the Directive is on this kind of re-use rather than access. Access regimes, as set out in freedom of information legislation, remain unaffected by the Directive.
4. The Regulations will apply to England, Wales, Scotland and Northern Ireland.

Rationale of the Directive

5. It is argued by the European Commission and others that the removal of barriers to the re-use of public sector information will act as a stimulus to the information and publishing industries in Europe to create innovative value added products and services. It will also lead to significant economic opportunities and enhance job creation across Europe. The growth of new value added information products and services will also enable users, both

professional and non-professional, to obtain information in formats and ways not necessarily offered by the public sector. This is likely to lead to better informed decisions, efficiency and compliance with the law and regulations. Another effect will be to enable the European Information Industry to develop and to compete with the US Information Industry.

6. Establishing pan-European products and services based on public sector information depends, however, on the ease of re-use of public information across Europe. 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 products and services. In particular small and medium sized enterprises (SMEs), which cannot afford any investment failure, may be deterred from entering the market. In the US, by contrast, the re-use of federal government information is enabled by a clear and simple legislative framework.
7. The establishment of a minimum set of principles, rules and standards across Europe on the re-use of public sector information 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. This will entail public sector organisations adhering to these principles. The extent to which they will need to change their current practices will vary across countries and types of organisation.
8. The new Regulations seek to strike the best balance between effective implementation of the Directive (so that the benefits described above will become available) and the cost of compliance, which will be borne by the public sector bodies, and the cost of the monitoring and regulatory measures needed to ensure compliance.

Background

9. The growth of the Internet as a channel of communication has led to the development of a vibrant information, content and publishing industry (the Information Industry), with many new players, particularly online publishers, entering the market to compete with established publishers and information providers.
10. The European Commission estimates the size of this market across Europe to be €496 billion¹, employing some four million people². In the UK, the turnover for the year 2000 was £18.37 billion³. The US remains, however, the world leader in this field. It is estimated that the US Information Industry is up to five

¹ European Information Technology Observatory 2004 www.eito.com

² Source: Proposal for a Directive of the European Parliament and of the Council on the re-use and commercial exploitation of public sector documents in the form of an Explanatory Memorandum produced by the European Commission, June 2002.

³ Source: Publishing in the Knowledge Economy: Competitiveness analysis of the UK publishing media sector by Pira International on behalf of the Department for Trade and Industry and the UK Publishing Media, 2002.

times the size of its European counterpart even though the two economies are almost equal in size⁴.

11. The public sector is by far the largest producer of information in Europe⁵. The European Commission estimates that between 15% and 25% of total data used in e-commerce trading is based on public sector information⁶.

12. In the UK, public sector information covers a diverse range of information. It includes:

- Primary and secondary Legislation, which is published for and on behalf of Her Majesty's Stationery Office [HMSO] and the Office of the Queen's Printer for Scotland [OQPS]
- Official records of the Proceedings of the Parliaments and the two Assemblies
- Case reports
- Departmental circulars
- Codes of practice.
- Mapping data produced by organisations such as the Ordnance Survey and the UK Hydrographic Office
- Meteorological data produced by the Met Office
- Consultation and policy documents
- Statistics produced by the Office for National Statistics
- Census data collected by the Office for National Statistics, the General Register Office for Scotland and the General Register Office for Northern Ireland
- Annual reports published by government departments, agencies and local authorities
- Scientific and research data
- Company information made available through Companies House
- Statutory registers such as those for birth, death and marriage and also land titles
- Patent information collected and produced by the Patent Office
- Health and safety guidance and reports published by the Health and Safety Executive
- Forms issued by local and central government such as tax forms
- Press notices
- Public Records
- Leaflets
- Technical reports
- Local planning information
- Regional economic strategies

13. The information is made available to the public in a variety of ways including publishing the information on official websites; in the form of free issue leaflets, pamphlets and books; as priced publications, often through private sector publishers who publish material on the public sector body's behalf; and by making the information available in statutory registers. The customers for this information are many and varied. They include the general public, companies, educational institutions, the legal profession, publishers, internet publishing companies, libraries, and the public sector itself.

⁴ Source: Commercial exploitation of Europe's Public Sector Information report by Pira International for the European Commission, September 2000.

⁵ Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000.

⁶ Source: Communication from the Commission to the Council, the European Parliament, the Economic and social Committee and the Committee of the Regions: eEurope 2002 – Creating an EU Framework for the Exploitation of Public Sector Information published by the European Commission, October 2001.

14. The UK Government has already made significant progress in encouraging the re-use of government information. This followed a wide-ranging policy review of government information policy. The Cross Cutting Review of the Knowledge Economy published by HM Treasury in December 2000⁷ and the earlier White Paper *The Future Management of Crown Copyright* (Cm 4300)⁸ in March 1999.
15. Two of the key initiatives which arose from the review process were the implementation of an on-line class licence, launched as the Click-Use Licence. This has proved highly successful with over 6,500 licences⁹ taken out covering users throughout the world. In addition, the UK Government introduced the Information Asset Register which provides details of information assets held by government departments and agencies. Both of these initiatives will make a significant contribution towards helping public sector bodies comply with the Directive in the UK.
16. Within the UK material produced by central government, including government trading funds¹⁰ such as Ordnance Survey and the Met Office is subject to Crown copyright protection under the Copyright, Designs and Patents Act 1988. The copyright in the material produced by other public sector bodies including local and regional authorities, as well as other public sector bodies which do not have Crown status, such as the Environment Agency, is held by the public sector body itself.
17. In Europe the Information Industry is hindered by the lack of transparency, consistency and clarity in the arrangements for the re-use of public sector information. The rules and practices for re-using the information diverge between countries or may, in some cases, not exist at all. The problems can take a number of forms but the main ones are:
 - the lack of information about the range of material available for re-use e.g. in indices, catalogues and metadata (information about information);
 - the lack of information about where the material can be obtained;
 - the lack of clear information about the charging structure;
 - the lack of simple standard licences that can be transacted quickly;
 - doubts as to whether the information can be accessed in a form that can be easily processed.
18. This is compounded for users who wish to develop information products and services that draw on public sector information from across Europe. Such users find themselves having to negotiate with a number of public sector

⁷ The Cross Cutting Review of the Knowledge Economy - see: http://www.hm-treasury.gov.uk/spending_review/spending_review_2000/associated_documents/spend_sr00_ad_ccrcontents.cfm

⁸ The Future Management of Crown Copyright - see: http://www.hms0.gov.uk/archives/copyright/future_management.htm

⁹ The number of Click-Use licences taken out during the period 1 April 2001 to 31 March 2005

¹⁰ A trading fund is part of government which has been established as a trading fund by means of a Trading Fund Order under the Government Trading Fund Act 1973. Typically, trading funds operate in very specialised fields and rely on their ability to derive income from their activities in order to cover their costs. Most of the material originated does not fall within the scope of material which is seen as being central to the process of government - see: http://www.hm-treasury.gov.uk/spending_review/spending_review

bodies across Europe and find that they are hampered by the lack of certainty and consistency. Dun and Bradstreet highlighted this in a survey of their European divisions. This showed significant variations in the prices paid for similar information across Europe¹¹.

19. These problems are particularly acute for SMEs, which do not have the resources required to overcome obstacles and negotiate complex agreements with the public sector. These companies cannot afford any investment failure and they may be deterred from entering the market. Pira International states that their research has indicated that there are examples of even large companies being deterred from developing new information products and services because of the difficulties that can arise in obtaining and re-using public sector information¹².
20. By contrast, their counterparts in the US have the certainty that they may re-use US federal information with virtually no restrictions. If we do nothing to address these problems in Europe it is likely that the US Information Industry will continue to grow at a faster rate than its European competitors so making it a dominant force in the development of worldwide information products and services. This will place the European Information Industry at a disadvantage when competing with US companies in the development of global information products and services.

Risk Assessment

21. The focus of the Directive is on the opportunities that will arise by producing a more streamlined and transparent set of conditions for the commercial exploitation and re-use of public sector documents across Europe. The risk is that without an improvement in the conditions for the re-use of public sector information, there will be a considerable loss in the economic development of products and services based on this information. This will be a loss both to the firms involved and to the end-users of the information and the value added services that might have been built upon it.
22. There are also risks associated with implementing the Directive in the UK. On the one side, if implementation is not effective then the benefits expected to flow from greater ease of re-use will not occur or will be reduced. On the other side, there is the risk that implementation will impose unnecessary costs through an excessive regulatory burden on the public sector bodies covered by the Directive, and through the costs of excessive regulatory mechanisms.

Attempts to quantify the potential economic benefit of greater ease of re-use

23. Over the last few years, a series of studies have tried to model and assess the economic impact of more open data policies. The debate has mainly focused on the issue of charging, contrasting the low cost model practised in the US – where charges for re-use of federal government information do not exceed the

¹¹ Source: Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000.

¹² Source: Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000.

marginal costs for the reproduction and dissemination - with cost-recovery models used in Europe. Most analyses - on the basis of economic modelling and/or empirical sector-based approach - conclude that low-pricing models give the highest benefits for society as a whole¹³. The latter report reviewed the number of databases exploited by public sector bodies and concluded that charging marginal costs for reproduction and dissemination leads by far to the highest economic impact.

24. The Directive is not prescriptive with regard to the pricing regimes adopted by public sector bodies, allowing national frameworks to remain in place and explicitly permitting charges based on costs of collection, production, reproduction and dissemination, together with a reasonable return on investment, and this is reflected in the Regulations.
25. The above evidence is therefore of limited use in this RIA, except insofar as it underlines the market potential for the exploitation of public sector information if re-use is made easier. Although this Directive does not alter the existing pricing regime in the UK, it is important to note that public sector bodies will be able, within the regime's guidelines for pricing public sector information, to recover the costs to them of complying with the Directive through their charging policies.
26. Quantification of the benefits to industry is very difficult. It is possible to point to the ways in which transparency of terms of re-use would be beneficial for re-users, and how this could be translated into cost savings. Much of the benefit of the new regime would be in the potential it would open up for the development of new value added information products and this would benefit both the firms who develop and supply the information products and the customers for these products. Public sector information has been an under-utilised asset, probably because the incentives facing public sector bodies have not made facilitating the re-use of their information a priority for them. Even bodies which have had accessible policies have not necessarily aimed for consistency of practice with other public sector bodies.
27. The sheer size of the economic value of public sector information in the European Union shows the potential of this area: this value has recently been estimated at around €68 billion making it comparable in size to sectors such as legal services and printing¹⁴. An increase in this value by a few per cent would give a benefit of increased turnover of several billion euros. Better utilisation of the economic potential of public sector information would lead to increased publishing activity and job-creation in the Information Industry. Many of these jobs will be created in SMEs.

¹³ Sources: Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000 and Welvaartseffecten van verschillende financiersmethoden van elektronische gegevensbestanden report by Berenschot and Nederlands Economisch Instituut for the Dutch Ministry of the Interior, 2001

¹⁴ Source: Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000.

28. An illustration of the potential growth of the European market, is to be found in the Pira study¹⁵ which compares the investment in public sector information [“Investment Value”] and the value added by users in the economy as a whole [“Economic Value”] for the USA and Europe. Economic Value could not be directly obtained, so aggregated data was used. Pira estimated the Investment Value of public sector information for the entire European Union at €9.5 billion a year. The Economic Value was estimated at €68 billion a year. By comparison, the Investment Value for the United States is €19 billion a year and the Economic Value is €750 billion a year. Even allowing for the many differences between the two economies (not least linguistic), the difference in the ratios between Investment and Economic Value is a useful indicator of the potential for growth in Europe.

Investment and Economic value of PSI in Europe and US		
In EUROS	EU	US
Investment value	9.5 billion	19 billion
Economic value	68 billion	750 billion

29. New channels are also expanding the potential for the market. As well as the Internet another notable example of the potential growth of the market through new channels is through the medium of mobile telephones. This market is expected to grow substantially. A recent study estimates the size of the market covering the delivery of information via mobile telephones to be in the order of €19 billion by 2006. The study states that attractive public sector information applications and added value applications based on public sector information can be a key element in developing this emerging services market.

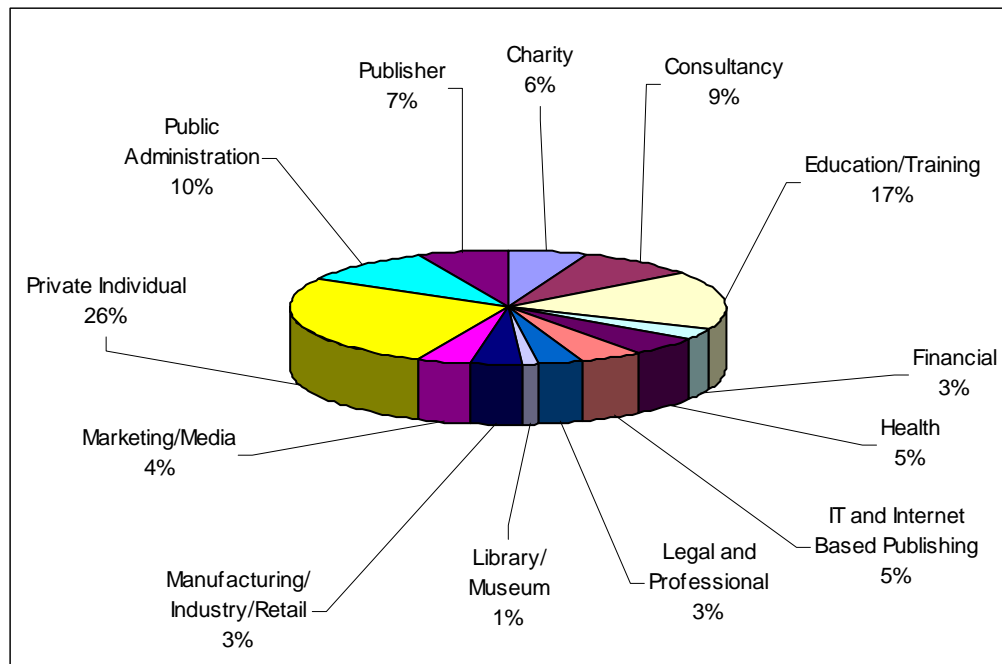
30. The proposed measures are likely to create, therefore, enhanced opportunities for the Information Industry in Europe to use public sector information for value added information products. The challenge for the European Information Industry, working with the public sector, is to fully exploit this opportunity.

31. The focus in the RIA is the potential impact on UK firms. Turnover in the UK in 2000 was £18.37 billion, employing 164,000 people. This compares to the pharmaceutical industry, which had a turnover of £12.03 billion and employed 65,000¹⁶. The Information Industry is, therefore, quite clearly a significant force in the UK economy. Within the Information Industry there are a number of very large companies such as Reed Elsevier, Reuters and Pearson, but there are also a large number of SMEs, particularly those active in the digital publishing field. Figures from the Small Business Service show that there are 5,450 businesses trading within the publishing sector, of which 4,360 have less than 250 employees.

¹⁵ The Commercial Exploitation of Europe’s Public Sector Information [Pira 2000]

¹⁶ Source: Publishing in the Knowledge Economy: Competitiveness analysis of the UK publishing media sector by Pira International on behalf of the Department for Trade and Industry and the UK Publishing Media, 2002.

32. Experience within the UK of applicants for Click-Use Licences has highlighted the wide variety of re-users. This is illustrated in the chart below for the period from 1 April 2001 to 31 March 2005:



33. The new measures would give the UK Information Industry the opportunity to develop new and innovative information products. The measures should lead to an improvement in opportunities across Europe. Of course, the benefits to the UK industry would depend upon their performance in competition with organisations in other countries, including US companies.

Obligations under the Directive

34. The measures in this Directive include provisions that will require action on behalf of public sector organisations, although within the UK both central government and the Scottish Administration have already put into place mechanisms which meet most of the requirements of the proposal. Similar mechanisms and best practice can be extended to other parts of the public sector. It is not expected that there will be any impact on the charity sector.

35. The general approach of the Directive is one that aims at a minimal extra burden on the public sector bodies. The main obligations under the Directive are as follows:

- establishing processes for encouraging re-use. This could be met by more effective use of notices in publications and on public sector web sites that allow re-use; by on-line licensing; and by the publication of standard licence terms;

- ensuring transparency and fairness. This would cover publication of terms of re-use, providing details of charges, means of redress and not granting exclusive licences; and
- the creation of asset lists.

In many cases public sector bodies will be able to build on existing good practice already in place.

36. The Directive provides that documents can be made available in their pre-existing formats and there is no obligation on the public sector to create documents that they would not otherwise have produced or to make them available in many different formats. This approach is also adopted by the Regulations.

Aids to Compliance

37. The Office of Public Sector Information (OPSI) has introduced a number of initiatives that are in operation across central government that can be extended to the wider public sector to assist public sector bodies in meeting their obligations under the Regulations. The prime examples are as follows:

Asset Lists

38. OPSI has the policy lead for the Information Asset Register (IAR) and its portal *Inforoute* which is used widely across central government as a way of identifying and accessing assets lists. OPSI will be developing a model for the next generation IAR and *Inforoute* in a way that will enable public sector bodies to easily identify information assets that are available for re-use in a joined-up and effective way. The key message for redeveloping IAR is the need to join up the similarities in existing and emerging information initiatives, policies and legislation to ensure that public sector information assets are easy to manage and easy to find, use and share. To facilitate the transition to the next generation IAR, there is a requirement to rationalise existing documentation relating to IAR and *Inforoute* and links with other information policy, particularly Freedom of Information Publication Schemes. OPSI, working with other key stakeholders will develop new strategies and models that will deliver an holistic approach in this area. Further information on how the IAR model can be developed and adapted across the wider public sector is available from www.opsi.gov.uk/psi

Information Fair Trader Scheme (IFTS)

39. OPSI has developed best practice in this area that will be helpful to the wider public sector in meeting their obligations under the Regulations. The IFTS was introduced in 2000 to support various UK policy initiatives that sought to encourage the re-use of Crown copyright material and other public sector information. Up to now the IFTS has been primarily, although not exclusively

so, geared to government trading funds. However, to facilitate compliance with the Regulations it will be rolled out to the wider public sector on a voluntary basis. IFTS is being developed to reflect the varying levels of information trading across the public sector including a simple checklist approach for public sector bodies that are not major information traders.

40. The IFTS is designed so that re-users can be confident that public sector information providers will treat them reasonably, consistently and fairly. It promotes standards to ensure that public sector bodies trade in an open, fair and transparent manner, and that effective complaints procedures are in place. The Scheme provides a clear and transparent system, which would ensure full Directive compliance under a robust audit. The system is highly visible, and so gains the confidence of re-users and stimulates re-use of public sector information.
41. The principles that are verified under IFTS are:
 - Openness – that the organisation maximises the information available for re-use
 - Transparency – that the organisation has clear and simple policies and procedures
 - Fairness – that all customers are treated the same
 - Compliance – that the organisation's procedure and internal policies promote and comply with the first three principles
 - Challenge – that the organisation has a robust complaints procedure
42. The full verification process includes interviews with key personnel, detailed case file and licence review and a website audit. Depending on the results of the verification, the public sector body will be accredited.
43. IFTS models are being developed to reflect the range of information responsibilities of public sector information bodies. These models focus on a public body's asset register, licensing activity and the transparency of the terms of re-use.

On-Line Licensing

44. There is also a need for standardisation of licences that will benefit both the private and public sector bodies. Such licences need to be capable of being adapted to meet specific applications and be available on-line. OPSI has developed the Click-Use Licence in consultation with the private sector that fulfils this need. Public sector bodies are encouraged to use the Click-Use Licence and are free to adapt the licence terms to meet their own needs. These standard licence terms have been published on the OPSI website <http://www.opsi.gov.uk/psi/licence-arrangement.htm>

Costs to the Public Sector

45. In this section we make an estimate of the cost to public sector bodies of meeting the obligations of the Directive as described above. Our estimate is based on an analysis of the likely additional resources, mainly in terms of staff time, that would be required to meet each of the obligations in a typical medium-sized local authority. Based on this estimate, we make a very approximate estimate of the aggregate cost over the whole economy.
46. Some of the obligations described in paragraphs 33–35 above will impose very little additional work because of work already undertaken to meet statutory and legal obligations, for example, in respect of Data Protection and Freedom of Information legislation. As already explained in paragraph 24, public sector bodies will be able, within the guidelines for public sector pricing, to recover the extra costs of complying with the Directive through their charging policy. Much if not all of the costs estimated below could therefore be recovered from the re-users of information.
47. Our estimate based on detailed discussions with the Essex County Council, is that for a medium size local authority the extra costs would be as follows:
 - initial costs of around £8,000. This would include work for introducing new procedures for publishing licence terms and charges; assessing the basis of charges (if appropriate); and adding unpublished datasets to existing information asset lists.
 - recurrent costs of around £2,000 a year. This would cover ongoing and periodic work e.g. updating asset lists, reviewing procedures, and answering queries from the public.
48. In central government there is no expected increase in costs as all obligations facing public sector bodies under the Regulations are already being met.
49. There are around 470 local authorities in Great Britain and approximately 550 health service bodies. We do not have information on how the costs of compliance with the Directive would vary by type and size of body. If the estimate we have described in paragraph 46 for a typical medium size local authority were applied to all the bodies mentioned, then the overall cost of meeting the obligations of the Directive would be in the region of £8.2 million in initial costs, with recurrent costs of £2.04 million a year.
50. Some respondents to the public consultation questioned the costs of compliance suggesting that they had been underestimated. However, none of the respondents who queried the assumptions made were able to provide any more robust evidence as to the actual costs to the public sector and no empirical data was produced. Nevertheless, given that the benefits are likely to be in the order of billions of Euros the costs of implementing the Directive would have to increase dramatically for it to become unviable.

Comparison of Costs of the Regulatory and Monitoring Options considered for implementing the Directive

51. In this section the costs of the regulatory and monitoring mechanisms that will be needed to ensure compliance with the Directive are considered and the model that was selected following the September 2003 Consultation.
52. 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.
53. **A third option** emerged from the consultation. This third option aimed to utilise the best practice being developed within OPSI and elsewhere but incorporating an independent complaints process, providing rapid low cost adjudication/resolution of disputes. The draft Regulations incorporated this third option. It was this approach that ministers agreed should be taken forward.

Cost of Option 3

54. Option 3, like Option 2, would be facilitated by offering a common framework of guidance, standard licences and charging mechanisms. This will provide essential support for bodies 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 complaints can be settled without recourse to litigation (action through the courts is an expensive option that often will not be justified by the value of the complaint).
55. The complaints process should be independent of the parties that are directly involved and should be channelled via the complaints process offered by the public sector body concerned. If there is no satisfactory conclusion, the complainant could refer the matter to OPSI. OPSI will investigate the complaint and issue a Recommendation. It will be open to either party in the dispute to refer the matter to a specially constituted board of the Advisory Panel on Public Sector Information (APPSI). The Review Board would be convened by the Chair or Deputy Chair of APPSI. APPSI is an independent non-governmental public body established in 2003, membership of which reflects expert interests in public sector information across the private and public sector. APPSI will also deal with complaints made against OPSI if they cannot be resolved via OPSI's internal complaints procedure.
56. The cost of this option is estimated to be £55,000 a year. This estimate is built up from assumptions about the numbers of complaints that are likely to arise and the costs of the procedures which would be in place to deal with them, as described in the following paragraphs.

How the complaints process will work

57. It is important that all public sector bodies should operate an effective complaints procedure. It should be made transparent to users how complaints will be handled; where complaints should be sent; how long it will take to respond to complaints; and what the means of redress are.
58. Re-users should complain direct to the public sector body that is the subject of the complaint in the first instance. However, in addition a complaints process has been established under the Regulations. The main features of the independent complaints process are:
- The complaints process is managed by OPSI. Complainants will be expected to specify the basis of their complaint and how a public sector body is failing to comply with the Regulations;
 - OPSI will investigate the complaint, and issue a Recommendation within thirty working days. Complex cases may be subject to a payment of £750, non-refundable. During its investigations OPSI will take into account the Regulations and the Guide to the Regulations and Best Practice.
 - Both parties can refer the complaint for review by the Review Board. The Chair or Deputy Chair of APPSI will convene an independent and balanced panel of experts to sit on the Review Board. The Review Board will investigate and provide a Recommendation within sixty working days. The Chair of the Review Board will have the discretion to co-opt individuals who are not existing members of APPSI.
 - Generally evidence will only be considered in written form. Complaints about OPSI will be referred to the Review Board in order to maintain an equivalent level of independence.
 - A summary of each case and all Recommendations will be published.
 - Compliance with Recommendations will be monitored by OPSI (or APPSI in the case of complaints involving OPSI.)
 - Non-compliance will be referred to the Minister to the Cabinet Office or the equivalent Scottish Minister with a recommendation that they issue a ministerial letter of direction.
59. Each party has the option at any stage during this process of taking judicial action through the courts or to refer issues to other regulatory bodies such as the Office of Fair Trading, the Office of the Information Commissioner or the Office of the Scottish Information Commissioner. The courts or other regulatory bodies may take into account any Recommendation or letter of direction in its deliberations.

The Role of the Advisory Panel on Public Sector Information (APPSI)

60. APPSI's terms of reference are to:
- advise Ministers on how to encourage and create opportunities in the Information Industry for greater re-use of public sector information;
 - advise the Director of OPSI and the Controller of HMSO about changes and opportunities in the Information Industry, so that the licensing of Crown

copyright and public sector information is aligned with current and emerging developments; and

- advise on the impact of the complaints procedures under the re-use of Public Sector Information Regulations 2005 and to review and consider complaints under those regulations.

61. Given this new focus on public sector information, APPSI is ideally placed to undertake a key and extended role in the complaints process as described above. APPSI will, therefore, operate in both an advisory capacity as well as having responsibilities under the proposed complaints process. Each of the two roles will be differently constituted to ensure impartiality.

Total costs of the implementation of the Directive

62. In summary, we estimate the total costs of the implementation of the Directive to be:

Costs to public sector bodies

Initial	£8.2 million
Recurring	£2.04 million

Costs of maintaining independent dispute resolution process - £55,000 p.a.

Total

Initial	£8.2 million
Recurring	£2.1 million

Issues of equity and fairness

63. The Regulations include measures with regard to fair trading and consistency of treatment and transparency for all re-users, including non-discrimination when the public sector re-uses its own documents for commercial activities. As such, it should improve equity and fairness.

Consultation with small business: the Small Firms' Impact Test

64. The Regulations will have no cost or compliance implications for small businesses, and would be beneficial to those in the Information Industry. This was confirmed by the Small Business Service.

Competition Assessment

65. The Regulations should prove favourable for competition. The Information Industry, particularly in the sphere of publishing on the web, is not dominated by one or more major players – no firm has more than 10% of the market share.

66. The Regulations will help establish a level playing field amongst re-users of public sector documents. The transparency and fair trading conditions can be

expected to have a considerable impact on the possibilities to re-use public sector information. Greater ease of re-use of public sector information will reduce costs and uncertainty, which have been barriers to the entry of firms, especially SMEs.

67. It is difficult to predict with any degree of certainty what the impact on the market structure will be, but with the reduction of barriers to entry, it is likely that there will be a greater market share for SMEs in a larger market. Of course, large firms will be well placed to expand also, but there is no reason to expect an increase in market concentration.
68. There are important and complex issues relating to competition between the private sector and the public sector, where the latter is adding value to information produced as part of its core activities. The Regulations establish principles of transparency and non-discrimination that are pro-competition. With regard to exclusive arrangements that are sometimes entered into by public bodies for reasons of public interest (for example, it would be uneconomic to publish certain types of information otherwise) the Regulations say that the validity of the reason should be reviewed every three years.
69. This is a market where there is scope for innovation in the way information is packaged and the channels over which it is made available. We have already quoted the examples of information over mobile phones. New generation mobile phones, digital television and broadband telecommunications and the greater spread of the Internet are all opening up new opportunities for innovation in the packaging and dissemination of information. This makes it all the more important that the Regulations should facilitate the re-use of public sector information.

Enforcement and sanctions

70. Any enforcement and sanctions will be directed towards public sector bodies not complying with the Regulations. We anticipate that most public sector bodies will utilise the best practice tools available via OPSI and others to ensure that they meet their obligations under the Regulations. The independent complaints process within the Regulations will provide a swift and economical way to resolve complaints, saving both the public sector bodies and re-users the need to resort to legal sanctions. Citizens and business will still have recourse to civil courts and/or the appropriate Ombudsman in the event that they consider a public sector body is not compliant.

Monitoring and Review

71. The Directive includes provision for a review to be undertaken within three years of adoption. The review will address the scope and impact of the Directive assessing the increase in the re-use of public sector documents, the application of the charging principles and the development of the European content industry.

Consultation

Within Government

72. The implementation of the Directive has been the subject of wide consultation across government including:

Advisory, Conciliation and Arbitration Service [ACAS]
Central Office of Information
Charity Commission
Companies House
Defence Geographic and Imagery Intelligence Agency [part of Ministry of Defence]
Department for Constitutional Affairs
Department for Culture, Media & Sport
Department for Environment, Food and Rural Affairs
Department for Transport
Department for Work and Pensions
Department of Health
Driver & Vehicle Licensing Agency
Fire Service College
Foreign and Commonwealth Office
Forestry Commission
Health & Safety Executive
Highways Agency
HM Land Registry
HM Treasury
Home Office
Inland Revenue
Law Commission
Medical and Healthcare Products Regulatory Agency
Met Office
Ministry of Defence
National Archives [formerly Public Record Office]
National Assembly for Wales
OFCOM
Office for Standards in Education [OFSTED]
Office of Fair Trading
Office of Gas and Electricity Markets [OFGEM]
Office of Government Commerce
Office of the Deputy Prime Minister
Office of the First Minister and Deputy First Minister [Northern Ireland]
Office of the Information Commissioner
Office of the Information Commissioner for Scotland
Office of Water Services [OFWAT]
Ordnance Survey
Ordnance Survey [Northern Ireland]
Patent Office
Registers of Scotland
Royal Mint
Scottish Parliament
The Scottish Executive
Treasury Solicitor
UK Hydrographic Office
UK Parliament
UK Passport Service
Vehicle and Operator Services Agency [formerly Vehicle Inspectorate]
Vehicle Certification Agency

73. In addition, APPSI, membership of which is drawn from public and private sector information interests, have also been consulted.

Local Government and the Health Service

74. Local authorities have been kept informed through the Improvement and Development Agency (IDeA). IDeA was established by and for local government in April 1999. Its mission is to support self-sustaining improvement from within local government. A workshop with local authorities was organised by HMSO in 2004. A workshop with representatives from the Health Service has also been held, and further events raising public sector body events are planned to raise awareness. OPSI has also contributed to a series of national workshops organised by IDeA aimed at local authority audience across the UK. OPSI and the Department of Trade and Industry also contributed to a series of workshops organised by the Digital Content Forum aimed at the Information Industry and the public sector.

General

75. An extensive series of meetings, seminars and workshops have taken place over the past year aimed at the private and public sector audiences with the purpose of spreading awareness of the new Regulations

Rural Proofing

76. Having been through the rural proofing checklist, we have determined that there is no impact on rural issues.

Summary and recommendations

77. We recommend that the Regulations provide a proportionate way of implementing the Directive. The obligations on public sector bodies should be met through implementation of best practice, as set out in the accompanying Guidance. The Guidance cites examples such as the Click-Use Licence and the Information Asset Register. It is backed up by an independent dispute resolution process.

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