

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 December 2004

1. This is a Revised Partial 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 Assessment issued as part of the September 2003 consultation.

Purpose and Intended Effect of Measure

Objective

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 via the attached draft Regulations, informed by the Guide to 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 end customers, the 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 in 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 proposed 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 industry 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 access information in formats and ways not necessarily offered by the public sector. This is likely to lead to improved access to information and 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.

Objective in the choice of method of UK implementation of the Directive

8. The draft 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 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 Queen's Printer for Scotland.
 - Official records of the Proceedings of the Parliaments and the two Assemblies
 - Case reports and 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.

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.

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.

- 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, land titles (which are administered by HM Land Registry and the Registers of Scotland).
 - 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.
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 in April 2001. This has proved highly successful with nearly 6,000 licences, covering users throughout the world, taken out since it was introduced. 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 ensuring compliance with the Directive within the UK.
16. Within the UK material produced by central government, including government trading funds⁹ 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.

⁷ The Cross Cutting Review of the Knowledge Economy - see: 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: www.hmso.gov.uk/archives/copyright/future_management.htm

⁹ 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: www.hm-treasury.gov.uk/spending_review/spending_review

17. In Europe however, 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 reusing 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 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 Europe¹⁰.
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 information¹¹.
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.

¹⁰ Source: Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000.

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

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 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 whole¹². 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 draft Regulations. The above evidence is therefore of limited use in this partial 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. This, and the provision allowing a reasonable return on investment, 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.
25. 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. There are also potential advantages of greater consistency of interpretation which could be achieved by means of a single regulator. However, 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 underutilised 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.
26. 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 printing¹³. An increase in this value by a few percent 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.
27. An illustration of the potential growth of the European market, is to be found in a study by Pira¹⁴ 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

¹² 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

¹³ Source: Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000.

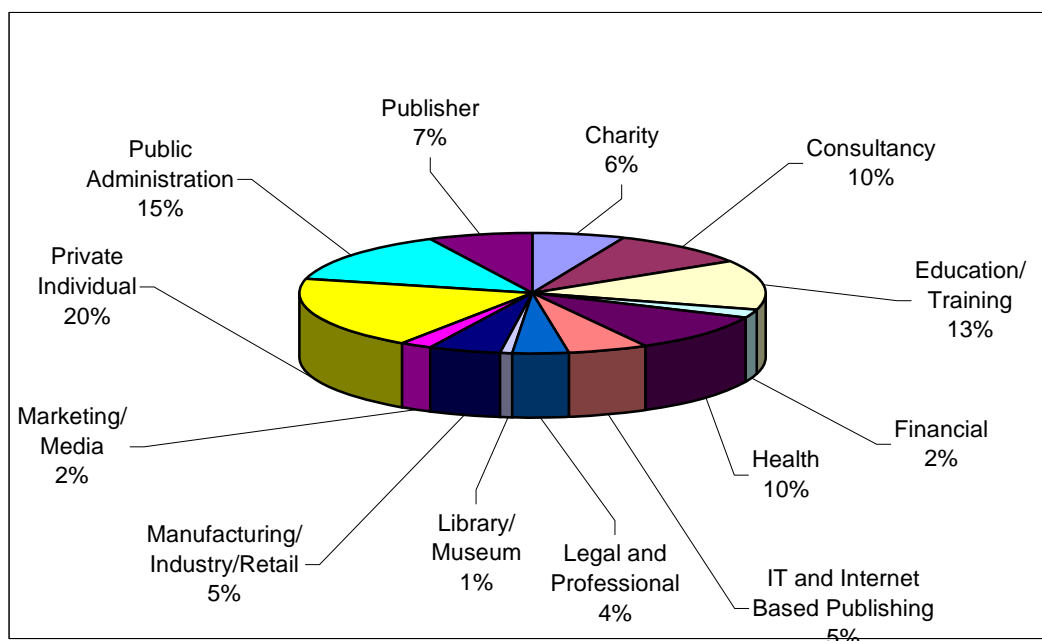
¹⁴ The Commercial Exploitation of Europe's Public Sector Information [Pira 2000]

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.

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

28. New channels are also expanding the potential for the market. We have already mentioned 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.
29. 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.
30. Our concern in this document 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 65,000¹⁵. 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.
31. 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 October 2004:

¹⁵ 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. 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

33. The measures in this Directive 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 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.
34. 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 publishing and copyright notices; 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.

35. 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 draft Regulations.

Aids to Compliance

36. The Office of Public Sector Information (OPSI), incorporating Her Majesty's Stationery Office, 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

37. 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.hms.gov.uk/psi.

Information Fair Trader Scheme

38. 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 Information Fair Trader Scheme (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 assessment models will be made available that reflect the varying levels of information trading activities of public sector bodies.
39. 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.
40. 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
41. 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.

42. The IFTS models will reflect the range of information responsibilities of public sector information bodies. This model focuses on a public body's asset register, licensing activity and customer information.

On-Line Licensing

43. 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 HMSOnline at www.hmso.gov.uk/psi/licence-arrangement.htm

Costs to the Public Sector

44. 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. We make a separate estimate of the costs of monitoring and regulating compliance with the Directive, which will depend upon the regulatory mechanisms to be put in place. This is discussed below (in paragraph 49).
45. 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.
46. Our estimate is that for a medium size local authority there would be extra costs divided 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.
47. In terms of central government, we estimate that there will be no increase in costs. Within central government all obligations facing public sector bodies under the Regulations are already being met.
48. 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.

Comparison of costs of the regulatory and monitoring Options considered for implementing the Directive

49. In this section we consider the costs of the regulatory and monitoring mechanisms that will be needed to ensure compliance with the Directive. We describe in some

detail the option that we have chosen for implementation following the September 2003 Consultation.

50. 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.

51. **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 dispute resolution process, providing rapid low cost adjudication/resolution of disputes. The draft Regulations incorporate this third option.

Cost of Option 1

52. The Information Commissioner for England and Wales suggested that, on the basis of implementing the Environmental Regulations (in addition to their role in administering Freedom of Information legislation), the administration costs of a regulatory body such as that envisaged in Option 1 would be of the order of £1 million a year. Compliance in Scotland would be some 20% of that total. This envisages 10-12 staff being involved in administering the Regulations.

Cost of Option 2

53. The main difference between Option 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 the savings arising from the private sector not having to take action through the courts; and
- the economic benefits that would accrue from the certainty that the Directive was properly implemented.

54. Option 2 was considered by public sector bodies as offering greater flexibility without re-users being disadvantaged. Given the concerns about compliance under this option, we have not attempted to estimate the regulatory costs of this option. As it would rely on voluntary compliance and not have a regulatory mechanism, it is envisaged that these costs would be lower than in option 1. However, we believe that the absence of a regulatory mechanism as set out in Option 1 or an independent dispute resolution process, as set out in Option 3 would lead, by default, to greater reliance on the courts to resolve disputes.

Cost of Option 3

55. 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 disputes 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).

56. Any dispute resolution process should be independent of the parties in dispute. Any complaints 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 Decision. It

57. The cost of this option would be around £55,000 a year. This estimate is built up from assumptions about the numbers of disputes 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 dispute resolution process will work

58. 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.
59. 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 dispute resolution process has been established under the Regulations. This is shown in the chart at Annex B. The main features of the independent dispute resolution process are:
- The dispute 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 Decision within thirty working days. Complex cases may be subject to a payment of £500, non-refundable. A key reference document for assessing whether public sector bodies have met their obligations under the Regulations will be the Guide to Best Practice (also published as part of this consultation)
 - Both parties can appeal to the specially constituted panel of APPSI. The Chair or the Deputy Chair of APPSI will convene an appropriately independent and balanced panel of experts (the Panel). The Panel will investigate and reach a Decision within sixty working days.
 - Generally evidence will only be considered in written form. The Chair of the Panel will have the discretion to co-opt individuals who are not existing members of APPSI.
 - Complaints about OPSI will be referred to APPSI so as to maintain an equivalent level of independence.
 - A summary of each case and all Decisions will be published.
 - Compliance with Decisions will be monitored by OPSI (or APPSI in the case of complaints made against OPSI.)
 - Non-compliance will be referred to the Minister to the Cabinet Office who will consider issuing a ministerial Letter of Direction.
60. Each party has the option at any stage during this process of taking judicial action through the courts or to refer issues to regulatory bodies such as the Office of Fair Trading or the Office of the Information Commissioner. The courts or other regulatory bodies may take into account any Decision or Letter of Direction in its deliberations.

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

61. Historically, APPSI has had three key responsibilities:
- to advise ministers on how to encourage and create opportunities in the information industry for greater re-use of public sector information;

- to advise OPSI about changes and opportunities in the information industry, so that the licensing of public sector information is aligned with current and emerging developments; and
- to advise on the impact of the complaints procedures under the Information Fair Trader Scheme.

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

Total costs of the implementation of the Directive

63. 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

64. 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

65. 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

66. 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.

67. The Regulations will help establish a more 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.

68. 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.

69. 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

70. 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

71. 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 dispute resolution process within the Regulations will provide a swift and economical way for disputes to be resolved, 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 complying.

Monitoring and Review

72. 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. The UK government will carry out a review at the same time.

Consultation

Within Government

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

Department for Work and Pensions
Department for Environment, Food and Rural Affairs
National Archives [formerly Public Record Office]
Foreign and Commonwealth Office
Central Office of Information
Companies House
Home Office
Ministry of Defence
Fire Service College
Met Office
Registers of Scotland
Royal Mint
Advisory, Conciliation and Arbitration Service [ACAS]
Office of Government Commerce
Charity Commission
Department of Health
Forestry Commission
Highways Agency
Inland Revenue
HM Treasury

Law Commission
 Department for Constitutional Affairs
 National Assembly for Wales
 The Office of Gas and Electricity Markets [OFGEM]
 The Office for Standards in Education [OFSTED]
 OFCOM
 The Office of Water Services [OFWAT]
 Patent Office
 The UK and Scottish Parliaments
 UK Passport Service
 Vehicle Certification Agency
 Ordnance Survey
 Ordnance Survey [Northern Ireland]
 Office of the Deputy Prime Minister
 Department for Transport
 UK Hydrographic Office
 Treasury Solicitor
 Health & Safety Executive
 Office of the First Minister and Deputy First Minister [Northern Ireland]
 Vehicle and Operator Services Agency [formerly Vehicle Inspectorate]
 Medical and Healthcare Products Regulatory Agency
 Driver & Vehicle Licensing Agency
 Defence Geographic and Imagery Intelligence Agency [DGIA] [part of Ministry of Defence]
 HM Land Registry
 Department for Culture, Media & Sport
 The Scottish Executive
 The Information Commissioner
 The Scottish Information Commissioner

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

Local Government and the Health Service

75. 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.

Public consultation

76. There was a full public consultation on the options for implementing the Directive in September to December 2003 which attracted a strong response. The draft Regulations and this Revised Partial RIA builds upon those responses. Since the earlier consultation there have been detailed discussions with industry representatives such as the Digital Content Forum. A number of information events have taken place and further workshops are planned to raise awareness amongst the information industry.
77. This public consultation runs from 22 December 2004 up to 18 March 2005, a little over twelve weeks to allow for Christmas and the New Year.

Summary and recommendations

78. We recommend that the draft Regulations provide a proportionate way of implementing the Directive, specifically Option 3. The obligations on public sector bodies should be met through implementation of best practice, as set out in the

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THE CONSULTATION CRITERIA

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

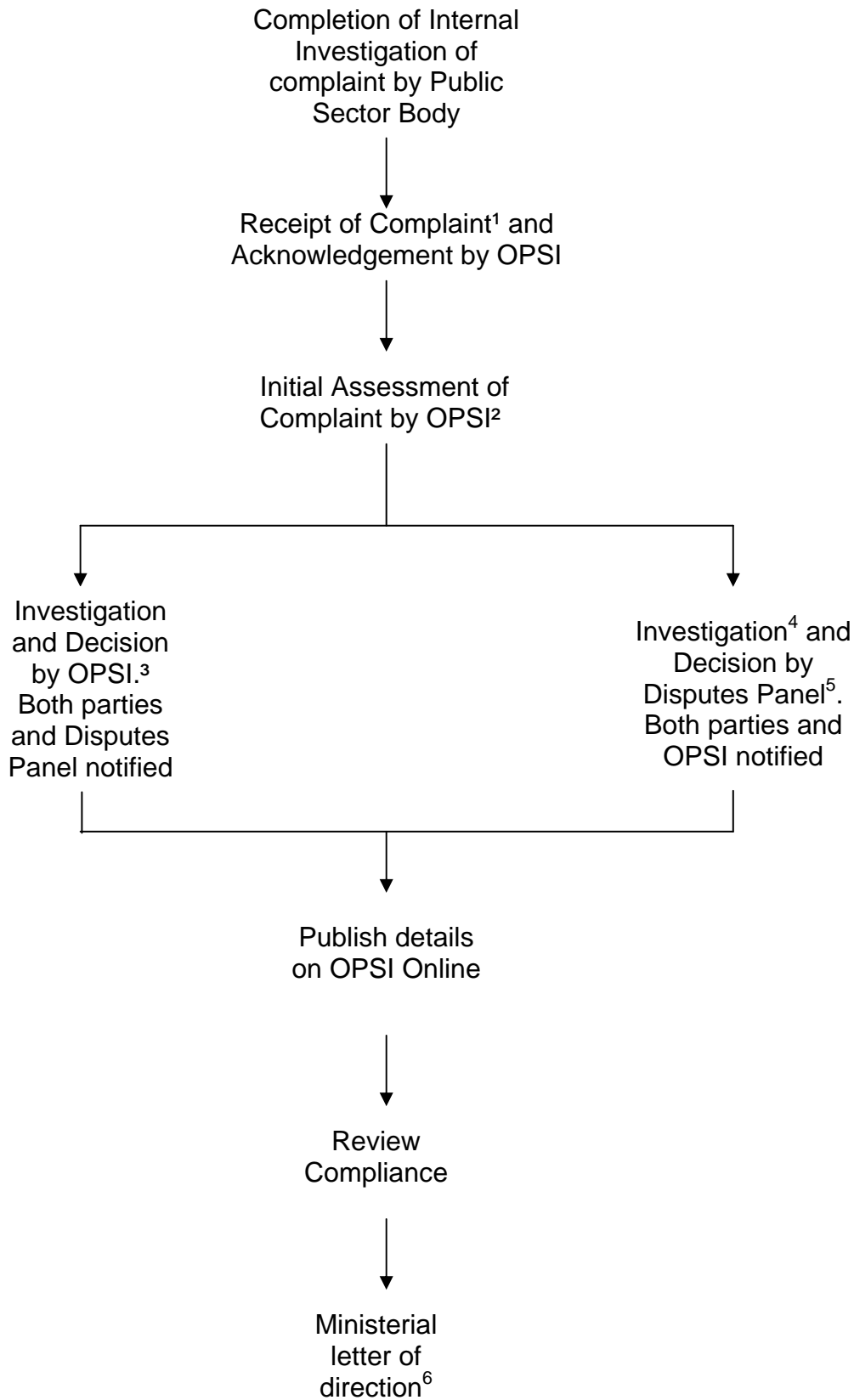
COMMENTS OR COMPLAINTS

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

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Dispute Resolution Process



Notes:

1. Re-user is able to pursue the matter through the Courts at any stage.
2. As part of the assessment of complaints, OPSI will assess whether the complaint raises issues that are linked to fair trading and competition and access to information and other information related issues. This may result in OPSI advising that the complaint shall be referred to the Office of Fair Trading, the Information Commissioner or other body.
3. Either party may appeal to APPSI if they are unhappy with an OPSI decision.
4. If an investigation is likely to cost in excess of £500 the person/organisation raising the complaint will be charged £500.
5. Any complaints about OPSI will be dealt with by APPSI.
6. Ministerial letter of direction will be sent if necessary.