

Annex B**Department for Environment, Food and Rural Affairs****Response to the Cabinet Office Consultation
“Making Open Data Real: A Public Consultation”**

This is a consolidated response to the consultation on behalf of the Defra Network. Organisations that have directly contributed to the response are: Natural England, The Environment Agency, CEFAS, the Marine Management Organisation, and the Food and Environment Research Agency.

EU transparency legislation

There is a general point we would like to make that doesn't fit neatly under any of the questions posed. Development of the government's approach to Open Data needs to be done with an awareness of the broader EU context that can affect what data Defra and its delivery network publish. For example, EU legislation requires each Member State to publish details of the money received by claimants under the Common Market Agricultural Policy (CAP). This is done through <http://cap-payments.defra.gsi.gov.uk>. The level of detail provided has been restricted following debate and a European Court of Justice ruling. The UK Government is anxious to return to publication of meaningful and useful CAP recipient data which maximises transparency consistent with the European Court ruling and UK data protection requirements. The UK is pressing the Commission to table proposals for a further revision of the legislation. Other areas where Defra has to operate within EU transparency legislation include fisheries, noise, air quality, water quality, water availability and waste. We would be happy to explore these issues in further detail.

1. *An enhanced right to data: how do we establish stronger rights for individuals, businesses and other actors to obtain, use and re-use data from public service providers?*

- We consider there is insufficient regard to the effects of these proposals on the Environmental Information Regulations 2004 (EIRs). The EIRs are an existing piece of 'right to data' legislation alongside the Freedom of Information Act 2000 that need to be taken into account. We think it would be useful if policy leads in Defra, MoJ and Cabinet Office were to meet to ensure that a consistent and streamlined approach is adopted:
 - Freedom of Information (FOI) seems to be used as a catch-all term for current access rights, with the risk that significant differences will be neglected
 - The EIRs derive from European legislation (as do DPA and ROPSI) and any further approach to strengthening the right to data in relation to environmental information that does not conform to the Directive (2003/4) on which the EIRs are based is unlikely to apply to the EIRs

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- The right to data already exists in the EIRs as it is not excluded from the definition of information - this right to data does not therefore need to be “enhanced” or “enforced” in relation to environmental information
- The “right to challenge” already exists - we already have the ICO, with considerable powers to investigate complaints and monitor implementation, including complaints on the publication scheme – enhancing these powers rather than creating a new body would help ensure greater consistency across the access regimes
- While there is a recognition in the paper that the legislative framework and differing definitions of providers “has often helped to create confusion and act as a barrier to openness” (6.3), this paper instead risks adding an extra layer of complexity in terms of new definitions, rules on charging and access, coverage of public bodies etc. We would reiterate the point made above in relation to the opportunity to simplify existing access regimes
- The new approach blurs the line between access and re-use
 - the right of access to environmental information is provided by the EIRs
 - re-use is governed by ROPSI / Open Government Licence
 - the paper introduces confusion over when charges can be made and what they cover
- Proactive publication is enshrined in regulation 4 of the EIRs
- Risk of major confusion over which bodies are public service providers
 - Will lead to confusion over who is required to publish/disclose what information under which regime and what they can charge for
 - any additional designation of “providers” will have no direct effect on the EIRs (but may rule them in or out depending on how they are added to Schedule 1 to the FOIA).
- Charging
 - What can and cannot be charged for is already potentially confusing as there are different rules in EIRs, FOIA, INSPIRE etc.
- Definition of datasets is still unclear
 - Seems initially to be factual and statistical, but there are later references to information about the internal workings of Government departments etc.

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- Misconception that many current EIR/FOI requests are for datasets and that the new approach would cut the effort required in handling requests. The definition of “public data” in Annex 2 does not reflect what the majority of EIR or FOI requests are for, which in Defra’s experience is for documents such as internal emails, Ministerial submissions, advice to ministers on policy in development, draft versions of guidance and policy documents, correspondence with prominent citizens and commercial bodies, correspondence with other public authorities,

legal advice on sensitive issues, notes of meetings with public bodies, internal staffing issues, etc..

- Failure to recognize the good points of current access rights
 - no need for the public to identify correct regime
 - the EIRs require a public authority to transfer requests to the correct public authority
- “Accreditation of information intermediaries” – first mentioned on page 28 without any explanation of what this role would be and how this would overlap with public authorities’ existing information rights experts/teams
- Defra should be mentioned in 8.12 as having policy responsibility – the whole document neglects environmental information. Who “owns” the regime is not the issue and is peripheral - the problem lies with the public authorities’ not fully understanding which regime applies to what.

In addition to the above EIR related points we would like to comment on the question of the cost limit under FOI. Raising the cost limit for providing datasets in response to FOI requests would put additional demands on public bodies at a time when staff resources are being reduced. These additional costs would need to be balanced against the benefits of releasing the data. The National Audit Office is undertaking a review of the Transparency initiative and this should help inform decisions on this.

Some of the costs of responding to right to data requests would involve work commissioned through outsourced IT suppliers for which no budgetary provision has been made in the spending review process, so re-prioritisation of resources would be needed. If work was commissioned through IT suppliers it may take longer than the 20 days currently allowed under FOI. This is because the supplier may need to be commissioned to provide a cost estimate for the work which could itself involve a charge. A decision could then be made in the light of the cost estimate on whether to commission the data extraction work. Only then could work on providing the data begin.

If the higher cost limit related just to data there would need to be a very clear definition of the distinction between data and information. In practice this would be very difficult to draw and would be likely to result in appeals to the Information Commissioner and the Information Tribunal requiring case law to establish a clear position.

Some data sets may contain substantial elements with 3rd party intellectual property rights relating to public and private organisations. Releasing such data with the copyright protection provisions in current FOI legislation could in practice result in increased infringement of 3rd party rights. If data containing 3rd party rights was excluded from a right to data, public bodies may need to devote considerable resources to determining whether a requested data set contained data with 3rd party rights and in stripping these out.

2. *Setting transparency/open data standards: what would standards that support an enhanced right to data among public service providers look like?*

There is a need for a policy to publish data in accordance with national and sector standards within a defined timescale following collection of the data. There would need to be defined exceptions to this policy. Specific standards are needed to cover format, licensing, metadata, controlled vocabularies and entity/reference standards.

Some of the data held by Defra and its delivery network is location-related data. As such it falls under the INSPIRE Directive (2007/2/EC) which is progressively setting out the detailed standards that apply to its publication up to 2020. There is an opportunity for the UK Location Programme to shape the detailed definitions of these standards in a way that meets UK open data aspirations.

Some data are of assured quality, for example Official Statistics are subject to assurance provided by the UK Statistics Authority. However, other data is not subject to the same quality assurance and there is a risk that if poor quality data is published it will undermine the public perception of the integrity of government data including official statistics. There is also a risk that business, NGOs and the public will base important decisions on inaccurate or incomplete data with damaging consequences, for example, publishing poor quality data relating to a major animal disease outbreak could lead to inappropriate conclusions by the public and the media. These problems can to some extent be alleviated by providing metadata giving information about the provenance, collection methods, checking procedures, completeness and other quality assurance aspects of the data. However, in some circumstances this type of metadata may itself be poor or incomplete. A policy position that might address these conflicting demands would be a presumption in favour of publishing data even if it may be of imperfect quality, but with exceptions to this principle where publication of data of poor quality would be likely to have a significant damaging effect that was not in the public interest.

It may be beneficial to review and revise the Public Sector Transparency Principles to reflect some of the above, and to use them as the basis for supporting a right to data. Defra seeks to publish data under the Open Government Licence where ever possible and sees this as a key enabler for transparency. There is scope for the Open Government Licence to be used more extensively across the public sector. Where there are factors that preclude releasing data for free re-use, it would be useful to have clear guidance on these factors to support consistency across the public sector. As a general principle it would be worth establishing that all data created in the public sector in order to carry out a public body's task should by default be made available without charge to other public sector bodies and to the public and others for non-commercial re-use. There may also be scope to adopt the Public Sector Mapping Agreement model to other areas of data that are charged for.

Provision of data by public bodies would also be easier if current arrangements for charging for data containing 3rd party Intellectual Property Rights (IPR) could be streamlined. Public bodies can find themselves in a position where they are willing to provide data for free but need to charge in relation to 3rd party IPR and pass on the charges. This is potentially a broader issue than this consultation is seeking to address but is nonetheless worth highlighting.

3. *Corporate and personal responsibility: how would public service providers be held to account for delivering Open Data through a clear governance and leadership framework at political, organisational and individual level?*

If there is a legally enforceable right to data, rights of appeal should be through existing channels of the Information Commissioner in relation to FOI/EIR and the Office of Public Sector Information in relation to the PSI regulations. Privacy and security exemptions are provided for under FOI and DPA legislation.

There is sometimes a difficulty in determining when anonymisation or aggregation of data are sufficient to avoid disclosure of personal information. There is a related issue that by removing personal data or the means to construct personal data from data sets, the integrity and evidential value of the data will be undermined. While the O'Hara report addresses some of these issues there is a need for the Office for National Statistics to provide clear cross government leadership and guidance in this area. Without this there is a risk that different public bodies will adopt inconsistent approaches to aggregation and anonymisation to protect privacy.

Within organisations the Senior Information Risk Owner is best placed to ensure that appropriate data security is maintained while promoting Open Data. The Public Sector Transparency Board and departmental Board level Transparency Champions should continue to play key roles in driving Open Data. Guidance on the role of the Board level Transparency champion would be welcome. Apart from Board level champions public bodies need a single function within the organisational structure with overall responsibility for the organisation's performance on Open Data. There is unlikely to be a one size fits all approach to what this function should look like or where it should sit, but some best practice guidance may be useful to help organisations develop a strong and effective governance structure for Open Data.

There are a number of other means of helping ensure that public bodies comply with Open Data commitments including: internal audits could be undertaken on this specific theme or with Open Data as part of a wider compliance audit; or the National Archives' Information Management Assessment Programme could be strengthened to encompass Open Data explicitly.

4. *Meaningful Open Data: how should we ensure collection and publication of the most useful data, through an approach that enables public service providers to understand the value of the data they hold and helps the public at large know what data is collected?*

Government should seek to build on and bring together existing inventories rather than creating new ones, which would risk making the position more confusing for users and would be more time consuming for public bodies to maintain. The Information Commissioner is undertaking a review of FOI Publication Schemes and government should explore with the Commissioner whether there is scope to build on these to rationalise existing inventories. For example, could the scope of FOI Publication Schemes be amended to encompass Information Asset Registers? Published Information Asset Registers are of variable quality across government with some departments continuing to maintain them and others having discontinued this.

This is unsatisfactory and should be addressed in some way. Where approved inventories are created their use should be enforced.

It would also be worth exploring whether FOI Publication Schemes maintained on individual organisational Web sites could be easily consolidated into a federated inventory that could be presented in searchable format on data.gov.uk or Directgov. In developing inventories we need to avoid an artificial split between structured data sets and semi-structured information: the user doesn't necessarily make this distinction. We also need inventories to be easy to maintain for public bodies and clear and simple for the public and business to use.

Prioritisation for inclusion of data in an inventory needs to balance a number of factors including: public and business demand for details of data sets in a broad subject area; likely contribution to social and economic growth; the likely cost to the public body of producing a detailed inventory for a particular subject area; and areas where there are obvious gaps. Analysis of requests for data should also provide an indication of which data sets are of greatest value to business and the public.

The Government Data Review has made a good start on identifying government data collection activities and the scope to reduce unnecessary data collection. This should be followed up and built on to look at not only where specific data collection can stop, but where data collection can be done more efficiently, placing less burden on the public and business. There may also be scope for a more joined up approach between public bodies to collecting data to reduce the burden it creates. At the same time there is a need to recognise that a significant amount of data is collected and published to meet UK and EU legal obligations, and that as such the burdens can only be reduced over time through changes to legislation.

As noted in response to question 2 data quality standards are clearly defined and implemented for official statistics and these should be maintained. Where there are no nationally or sectorally defined quality standards of this sort, public bodies should develop internal policies and standards to ensure that the data is fit for purpose in relation to the organisation's public task. In some cases fit for purpose will allow for a degree of inaccuracy that would require disproportionate use of public resources to correct. In general public bodies should not go beyond this fit for purpose requirement, and should not undertake extra work to polish data for publication. Doing so would divert scarce public resources unduly with limited benefits. The exception to this is where public bodies create value added services and seek to recover the costs within the framework of PSI Regulations. As noted in response to question 2 public bodies should seek to provide information about the quality of data sets, so that users can make reasoned judgements when relying on data for evidential and decision making purposes.

Open Data has an important role to play in policy development but simply making available large quantities of raw data does not in itself enable this. There is a need to achieve long term consistency of reporting to uniform standards, so that over time like-for-like data can be compared providing clear outcomes that can be acted on and can influence policy development.

5. *Government sets the example: in what ways could we make the internal workings of government and the public sector as open as possible?*

Government should move to a position of publishing data by default unless there are personal information or security reasons for not doing this. Good progress has already been made in taking this approach with environmental information and it could be further developed as an exemplar. The provision of wikis or comment pages in relation to datasets provides a useful channel for open challenge and discussion, which can help build public confidence. However, we need to be realistic about how far such comments can be monitored and responded to by public bodies.

If a right to data becomes legally enforceable public bodies need to give visibility to it not just on the main information access pages of their Web sites, but in areas of Web sites where data is made available. There should be easy to use online forms that allow users to request data. These should be as simple as possible, but should be structured to obtain sufficient information about what the user is requesting to enable the public body to meet the request without having to seek clarification.

There is a need for guidance on how to release data associated with policy and research. In some cases a small set of data associated with a piece of policy or research could be released as a file in re-usable format alongside the policy or research document. It would not be practical or helpful to hold these sort of data fragments on a central portal. However, in many cases the policy or research will be based on analysis of a range of large datasets and these should be clearly referenced and linked to. This data may be held on data.gov.uk, but in many cases it will be held on a wide range of existing repositories run by Research Councils and academic bodies.

6. *Innovation with Open Data: to what extent is there a role for government to stimulate enterprise and market making in the use of Open Data?*

To date release of open data has focused on providing data sets in a re-usable format through data.gov.uk. This has resulted in a range of innovative applications being developed, but there is a need to understand why more use has not been made of this resource. Does data.gov.uk have sufficient visibility for potential users to find it? What background and areas of interest do visitors to the site have and what are they seeking? Is the data.gov.uk designed as effectively as possible to enable easy access to data? Do potential users lack the tools or expertise to make use of data? Based on an understanding of the potential user community and the extent to which current arrangements meet its needs it should be possible to determine the most effective ways to stimulate innovation.

Data is often of value to local and national specialist interest groups that have existing online portals and communities. It would be worth exploring - possibly through a number of pilots - how to provide visibility of open data to these groups. Options might include an outreach programme to local voluntary organisations showing how existing data may be relevant to their local interests; engagement in established online forums and communities to inform and generate interest in open

data resources; and provision of access to tools or expertise on a selective basis to enable visualisation and analysis of data.

There is also a need for those developing and delivering policy in government to have a greater understanding of the potential of open data to both inform the policy making and delivery process. This would help ensure that an open data culture is embedded in the thinking of public bodies when they analyse problems and design interventions.

Various organisations within the Defra Network, including the Environment Agency, have practical experience in providing open data services to citizens, government, and commerce. There is an opportunity to make the 'environment sector' an exemplar of open data.

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