

August 2014

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Consultation on the UK  
implementation of Directive  
2013/37/EU amending  
Directive 2003/98/EC on  
**the re-use of public sector  
information**

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# About this consultation

This consultation is being run by The National Archives, which leads on policy on the re-use of public sector information (PSI) in the UK. It is hosted on the GOV.UK website, and also on the NI Direct website<sup>1</sup>, and the Scottish Government website<sup>2</sup>.

## SCOPE

<b>Topic of this consultation</b>	The proposed options to transpose certain amendments to the Directive 2003/98/EC on the re-use of public sector information ('the PSI Directive') contained in Directive 2013/37/EU ('the amending Directive') into UK law.
<b>Scope of this consultation</b>	This consultation invites comments on the proposals for implementation. Draft regulations to transpose the amending Directive into UK law are not part of this consultation. Access to information is out of scope of this consultation.
<b>Areas out of scope</b>	The Directive, as amended, does not apply to: <ul style="list-style-type: none"><li>• documents<sup>3</sup> not supplied as part of the public task of the bodies concerned;</li><li>• documents where third parties hold intellectual property rights;</li><li>• documents excluded by virtue of the UK's access regimes, including on the grounds of protection of national security, defence and public security, statistical and commercial confidentiality;</li><li>• documents where the public or commercial re-users have to prove a particular interest in order to obtain access to the documents;</li><li>• parts of documents containing only logos, crests and insignia;</li></ul>

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<sup>1</sup> <http://www.nidirect.gov.uk/featured-consultations>

<sup>2</sup> <http://www.scotland.gov.uk/Topics/Economy/digital/digitalservices/datamanagement/datainnovation/OpenDataReuseofPSIUK>

<sup>3</sup> Though the PSI Directive is titled the Directive on the re-use of public sector information, its articles actually refer to the re-use of documents. A document is defined as meaning "(a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording); (b) any part of such content"

- documents containing personal data where the re-use of the data would be incompatible with the provisions of the Data Protection Act 1998;
- documents held by public service broadcasters;
- documents held by educational and research establishments (except university libraries);
- documents held by cultural establishments other than libraries (including university libraries), museums and archives.

**Geographical scope** The proposed transposition covers the whole of the UK.

## **BASIC INFORMATION**

**To** This consultation is likely to be of particular interest to users and re-users of public sector information for commercial or non-commercial purposes.

It is also likely to be of interest to public sector bodies, in particular public sector museums, libraries, university libraries and archives which will be brought within the scope of the PSI Directive for the first time. Public sector bodies already covered by the PSI Directive should note the changes introduced by the amending Directive.

**Responsibility for the consultation** This consultation is being run by The National Archives on behalf of the UK with agreement from the devolved administrations. It is being conducted in line with the Government's published [Consultation Principles](#), and with the Department for Business, Innovation and Skills [Transposition Guidance: How to implement European Directives effectively](#).

**Length of the consultation** This consultation is to run for 7 weeks, from 20 August 2014 to 7 October 2014. A 12 week consultation period is not required in this instance because the proposed implementation is amending existing UK regulations to give effect to the amendments to the PSI Directive, and is not making fundamental changes to the structures and processes already in place in the UK.

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# 1

## Introduction

- 1.1 Public sector information, (PSI) when made freely available for re-use, delivers huge benefits. First, reducing barriers to re-use can stimulate the development of information based products and services which can deliver economic benefits for the UK in terms of jobs and business growth. Second, making public sector information available for re-use promotes transparency and strengthens democratic engagement.
- 1.2 European Directive 2003/98/EC on the re-use of public sector information ('the PSI Directive') has been in place since 2003<sup>4</sup>. This Directive was implemented under UK law by the Re-use of Public Sector Information Regulations 2005 (S.I. 2005/1515) ('the PSI Regulations').<sup>5</sup>
- 1.3 The PSI Directive was amended in 2013, with measures to increase the number of public sector bodies subject to the PSI Directive, to require certain public sector bodies to allow re-use and to extend the scope of re-use to museums, libraries and archives in certain circumstances and further encourage wider re-use. The PSI Directive does not apply to personal information.
- 1.4 This consultation seeks your views on proposals for implementing the amending Directive<sup>6</sup> in the United Kingdom. The amending Directive was published in the Official Journal of the European Union on 27 June 2013 and can be found at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF>

### Defining public sector information

- 1.5 Public sector information can be defined as:

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<sup>4</sup> Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information. <http://eur-lex.europa.eu/LexUriServ.do?uri=OJ:L:2003:345:0090:0096:EN:PDF>.

<sup>5</sup> The Re-use of Public Sector Information Regulations 2005.  
<http://www.legislation.gov.uk/uksi/2005/1515/contents/made>.

<sup>6</sup> Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information.

The wide range of information that public sector bodies collect, produce, reproduce and disseminate in many areas of activity while accomplishing their Public Task.<sup>7</sup>

In the UK, public sector bodies are defined in the PSI Regulations as a diverse range of organisations including government departments, Ministers of the Crown, police, fire and rescue authorities to the smallest local authorities, among many others. The volume and variety of information produced and collected by the public sector bodies in fulfilling their public tasks is significant, ranging from complex, massive datasets compiled by the Met Office for weather forecasting purposes, to minutes of meetings.

## **What the 2003 Directive on the re-use of public sector information covers**

- 1.6 The PSI Directive removed many barriers to the re-use of PSI across the European Union. Re-use in the PSI Directive is defined as meaning “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.” Detailed information about re-use of PSI and its impact can be found in the Impact Assessment at Annex A.
- 1.7 The PSI Directive provides for:
- clarity of any charges to be made for re-use (with an explanation of basis of the charge being available on request) and with total income not to exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment
  - allowing re-use of documents in a timely, open and transparent manner
  - application of fair, consistent and non-discriminatory processes
  - transparency of terms, conditions and licences
  - the ready identification of public sector information that is available for re-use
  - the prohibition of exclusive licences except in exceptional cases.

## **Amendments to the Directive**

- 1.8 The European Commission launched a public consultation to measure the impact of the PSI Directive in 2010. The responses to the consultation indicated that although considerable progress had been made in certain Member States, notably in the UK, barriers remained which prevented the full potential of PSI from being realised. The Commission concluded therefore, that more needed to be done in order to maximise the potential of PSI. The Commission therefore published proposals for amendments to the PSI Directive in December 2011.

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<sup>7</sup> As described in the glossary of terms produced by the Advisory Panel on Public Sector Information, which can be found at <http://data.gov.uk/glossary>.

Negotiations between Member States took place during 2012 and 2013 culminating in the adoption and publication of the amending Directive in June 2013.

1.9 The main changes in the [amending Directive](#) are to:

- require public sector bodies (PSBs) to allow the re-use of existing and generally accessible documents they create, collect or hold. The effect of this is to make permitting re-use mandatory in most cases.
- extend the PSI Directive's scope to cover PSI held by public sector museums, libraries (including university libraries) and archives where they allow their information to be made available for re-use.
- introduce the principle that charges for re-use should be set at marginal cost, with exceptions in certain circumstances.
- introduce a means of redress operated by an impartial review body with the power to make binding decisions on public sector bodies.

1.10 Member States are required to implement the amending Directive no later than 18 July 2015 although the UK intends to transpose ahead of that date, due to the potential economic and social benefits brought by the removal of barriers to PSI re-use.

## UK policy on public sector information

1.11 Transparency and economic growth are key priorities for the Government. Enabling the re-use of public sector information contributes to the Government's commitment to transparency and openness by creating a more open flow of information available for business and the public to use and re-use in products and services. The aims of the amending Directive that is the subject of this consultation are consistent with UK policies<sup>8</sup> on PSI and open data as set out in:

- the Government's [Open Data White Paper](#) in June 2012;
- the Government's [response to the Shakespeare Review](#) of Public Sector Information in June 2013;
- the [Open Data Charter](#) signed by the G8 leaders on 18 June 2013; and
- the UK's [National Action Plan](#) under the Open Government Partnership, published 31 October 2013.

1.12 The Shakespeare Review incorporated economic analysis undertaken by Deloitte which estimated that the annual direct economic benefits of PSI were around £1.8bn and that the wider social value of PSI was in excess of £5bn.

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<sup>8</sup> Devolved bodies in Northern Ireland and Scotland have not been directly involved in many of these UK government policies. The Northern Ireland Executive will develop and implement an Open Data Strategy and Policy. This work is currently being progressed by Digital Transformation Services. The Scottish Government has published a commitment, as part of its Data Vision, to develop an Open Data Strategy by December 2014.



**1.13** The removal of barriers to re-use also serves to strengthen government and public sector transparency, participation and accountability and supports the Prime Minister and the Coalition Government's intention for the UK to 'be the most open and transparent government in the world'.

**1.14** The PSI Directive was adopted in 2003 and implemented in the UK by the PSI Regulations in 2005. Since then, the UK has introduced a number of initiatives which support and encourage re-use. These include:

- the establishment of a low-cost statutory complaints process under the existing PSI Regulations
- the establishment of the Information Fair Trader Scheme which establishes central principles of information trading and management
- introducing well-established charging policies for information re-use.

**1.15** This progress has continued under the Coalition Government with the introduction of initiatives which also support the Government's open data and transparency policies. These include:

- the development of the UK Government Licensing Framework and the Open Government Licence
- the "right to data" sections introduced to the Freedom of Information Act by the Protection of Freedoms Act
- the proactive release of datasets through data.gov.uk and departmental Open Data Strategies.

The UK's strategy in the practical implementation of the PSI Directive has been to develop solutions that are proportionate and which do not impose financial burdens either on public sector bodies or the re-user community.

## **Why we are consulting you now**

**1.16** The amending Directive was published in June 2013. These amendments require some changes to the PSI Regulations that implement the PSI Directive. This consultation seeks views on the provisions in the amending Directive for which Member States have discretion in how they decide to implement within their own administrative, legal and policy contexts – specifically, Article 4 (means of redress) and Article 6 (principles governing charging).

# 2

## Summary of questions

Our proposals for implementing the amending Directive are set out in Chapter 3 of this consultation document.

We seek your views on the following questions.

### Article 4 – redress

The amending Directive introduces in Article 4(4) the requirement for Member States to have a means of redress in case applicants wish to appeal decisions on re-use made by public sector bodies. The means of redress shall include the possibility of review by an impartial review body, whose decisions are binding on the public sector body concerned.

The Government proposes that this Article of the amending Directive would be best implemented by retaining the existing investigative body (the Office of Public Sector Information, part of The National Archives) with referral to a First-tier Tribunal such as the Information Rights jurisdiction<sup>9</sup>, for a legally binding decision (Option B in paragraph 3.11 below). This is because it:

- meets the requirements of the amending Directive
- builds on existing resources and expertise which sit within The National Archives
- provides legal certainty and assurance in delivering binding decisions through an independent judicial tribunal. This avoids placing extra burdens on the court system and represents a low cost alternative to seeking a decision obtained directly from the courts

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<sup>9</sup> Formal title: the General Regulatory Chamber of the First-tier Tribunal (Information Rights jurisdiction).

- links with The National Archives' other related activities on Crown copyright, licensing, establishing best practice on access and re-use, official publishing and information management
- provides a level of continuity and is a proportionate and cost effective option

### **Question 1**

**Do you agree that this represents the most appropriate way to deliver the means of redress required by the amending Directive?**

**If you do not agree, what do you think would be suitable alternative and why?**

### **Question 2**

**Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals against decisions made under the amending Directive?**

### **Question 3**

**Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals?**

**The General Regulatory Chamber Rules may be found at:**

<http://www.justice.gov.uk/tribunals/rules>

### **Article 6 – charging options**

As explained in paragraph 3.16 below, the amending Directive requires Member States to lay down objective, transparent and verifiable criteria for the calculation of charges in cases where charges above marginal cost are made (Article 6(3)). The approach considered for implementing the requirements of Article 6 to deliver the criteria for calculating costs under the amending Directive, is discussed at paragraphs 3.16 to 3.19.

### **Question 4**

**Do you have any comments about the proposed approach to laying down criteria for the calculation of charges in cases where charges above marginal cost are made?**

### **General question**

### **Question 5**

**With reference to the impact assessment, are there any other impacts, benefits or implications of the proposals which should be considered?**

# 3

## Proposals in detail

### Proposals to implement the amending Directive on the re-use of PSI

- 3.1 Wherever possible, the amending Directive will be implemented by copying out – that is by reproducing as closely as possible the text of the amending Directive, in line with the Government’s [Guiding Principles for EU Legislation](#).
- 3.2 The amending Directive amends articles 1-9, 11 and 13 of the PSI Directive. It is envisaged that copy out will be followed for all articles with certain exceptions which in the main relate to articles 4 (means of redress) and 6 (principles governing charging). The amending Directive allows Member States discretion on how to implement articles 4 and 6 within their own administrative, legal and policy contexts. It is these discretionary areas that are the subject of this consultation exercise.
- 3.3 The PSI Regulations will be amended to reflect the provisions of the amending Directive. The order and language of the existing PSI Regulations and the need to consolidate the ‘right to data’ provisions relating to the release and re-use of requested datasets with the amendments made to the PSI Regulations may reduce the scope for strict copy out. The ‘right to data’ provisions were inserted into the Freedom of Information Act 2000 by the Protection of Freedoms Act 2012 and established an automatic right of re-use for certain types of accessible datasets.

## **Proposals where copying out the amending Directive is not possible**

- 3.4 There are two main areas of the amending Directive where it is not possible to directly copy out the provisions into the UK Regulations. This is because there is an element of discretion open to Member States as to how the amending Directive is implemented. The provisions in question relate to Article 4 of the amending Directive, which covers with the means of redress for re-users under the Directive; and Article 6 which deals with principles governing charging. Some of the questions in this consultation relate specifically to these issues.
- 3.5 The Government has produced an impact assessment which assesses the impact of the amended Directive and the various options. This impact assessment has been published alongside this consultation. The proposed approach on redress and charging are summarised below.

### **Article 4 Proposal – the means of redress**

#### Amending Directive requirements

- 3.6 Article 4.4 states, in respect of the means of redress:

Any decision on re-use shall contain a reference to the means of redress in case the applicant wishes to appeal the decision. The means of redress shall include the possibility of review by an impartial review body with the appropriate expertise, such as a national competition authority, the national access to documents authority or a national judicial authority, whose decisions are binding upon the public sector body concerned.

- 3.7 Article 4 introduces the requirement for Member States to have a means of redress which should include the possibility of review by an impartial review body with relevant expertise, whose decisions are binding on the public sector body concerned. This will allow re-users and potential re-users to appeal decisions made by public sector bodies regarding re-use of the PSI they hold. As the amending Directive does not specify what form of redress mechanism Member States should operate, there is some flexibility for Member States in transposing this requirement.

#### Current position

- 3.8 Under the current process in the UK under the PSI Regulations complaints about re-use are initially considered by the public sector body concerned. If the re-user remains dissatisfied with the outcome they can refer the matter to the Office of Public Sector Information (OPSI), part of The National Archives, which investigates the complaint and publishes its recommendations. Both the public sector body which is the subject of the complaint and the re-user can then request that a review body, currently the Advisory Panel on Public Sector Information (APPSI, an advisory non-departmental public body), review OPSI's

recommendation. OPSI's and the review body's recommendations are not legally binding and so the current process would not meet the amending Directive's requirements.

### Proposals for implementation

**3.9** The Government proposes that the best means of implementation for Article 4 is to retain the existing investigative body (OPSI, part of The National Archives) with referral to a First-tier Tribunal, such as the Information Rights jurisdiction<sup>10</sup>, for a legally binding decision (Option B in the options considered below).

**3.10** This proposal meets the requirements of the amending Directive while building on the established expertise developed by OPSI during a decade of investigating re-use complaints. It provides legal certainty and assurance in delivering binding decisions through an independent judicial tribunal, and avoids placing unnecessary burdens on the courts system. A judicial tribunal should not raise questions of propriety, partiality or conflicts of interest and will enable binding decisions to be made fully independent of Government. As the impact assessment sets out, this option is considered to be the most proportionate and cost-effective solution. The one-off cost to establish the new service will be £42,000 in the first year for up to 10 cases, with a cost of £3,500 for each subsequent case thereafter. We consider this to be the solution that best reconciles the need to produce a model that is transparent and effective but without imposing significant burdens on the public sector. We propose that the General Regulatory Chamber of the First-tier Tribunal is the most appropriate judicial tribunal for questions to be referred to under the amending Directive. For more information on the First-tier Tribunal, see Annex C.

**3.11** Four potential options were considered to transpose the means of redress requirements of the amending Directive in the UK. These were:

- **Option A:** retention of the existing investigative body (OPSI) with a separate review body mechanism, possibly the Advisory Panel on Public Sector Information;
- **Option B:** retention of existing investigative body (OPSI) with referral to a First-tier tribunal, such as the Information Rights jurisdiction, for a legally binding decision (the preferred option as outlined above);
- **Option C:** transfer of the existing investigative body's (OPSI's) relevant function to a body which has similar regulatory responsibilities. This would include access to a tribunal process.
- **Option D:** direct recourse to the courts.

Three of these include an investigatory stage prior to the review by an impartial review body with the ability to make binding decisions. Experience has shown that many complaints can be resolved informally at an investigatory stage

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<sup>10</sup> Formal title: the General Regulatory Chamber of the First-tier Tribunal (Information Rights jurisdiction). The First-tier Tribunal's remit extends to all parts of the United Kingdom, so there is no requirement for separate provision in Northern Ireland, Scotland or Wales under this proposal.

before escalation to an appeals stage. This also supports the aim to provide a redress mechanism that is low cost and proportionate.

- 3.12** Although Option A has proved a proportionate and low-cost solution under the current PSI Regulations, OPSI and APPSI would be unlikely to meet the requirements of impartiality and ability to make binding decisions that are required by the amending Directive.
- 3.13** Under Option C, the Impact Assessment considered the transfer of an investigative role to an alternative impartial body such as the Information Commissioner's Office (ICO), the most likely alternative to OPSI. It raises the possibility of any complaints relating to devolved Scottish public sector bodies, for example, having to be routed through the Scottish Information Commissioner's Office. We considered that anything other than a UK consolidated approach to redress is likely to lead to confusion and inconsistency of approach. We feel, therefore, that the UK approach should build on the existing model operated through OPSI using and developing existing expertise held by OPSI.
- 3.14** The requirement for a body that could deliver legally binding decisions could be achieved by framing the Regulations so that the decisions of public sector bodies can be challenged by direct recourse to the courts as in Option D. However, this option could prove potentially expensive both for re-user and for the public sector bodies which would need to respond to appeals. We concluded therefore that this is unlikely to be a cost-effective solution.

**3.15 Your views on this proposal are sought in this consultation.**

## **Article 6 Proposal – principles governing charging**

### Amending Directive requirements

- 3.16** While the amending Directive (Article 6(1)) sets out that charges made for the re-use of documents shall be limited to the marginal costs of reproduction, provision and dissemination, there are some exceptions. Article 6(3) of the amending Directive states, in respect of the charging criteria:

...the public sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria to be laid down by the Member States. The total income of those bodies from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.

- 3.17** This provision only applies to "public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks"; and by way of exception to "documents for which the public sector body concerned is required to generate sufficient

revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination" as defined by law or by other binding rules or (in their absence) by common administrative practice.

- 3.18** The amending Directive states that where charges are made for the re-use of information, the charges should be limited to the marginal costs incurred for their reproduction, provision and dissemination. There are three exceptions to this provision on charging. Two of the exceptions ensure that public sector bodies, such as trading funds and other public sector bodies that are required to generate sufficient revenue to cover a substantial part of their costs will continue to be able to charge above marginal cost. The third exception applies to museums, libraries (including university libraries) and archives.
- 3.19** The amending Directive also requires that where charges above marginal cost are made, such charges should be calculated according to objective, transparent and verifiable criteria to be laid down by Member States. In any event, the total charge should not exceed the cost of collection, production, reproduction and dissemination together with a reasonable return on investment. As far as the objective, transparent and verifiable criteria are concerned, it is proposed that the wording would be included in the implementing legislation providing the criteria for calculation of the amount of a charge.

#### Current position

- 3.20** In the UK, the Cross-Cutting Review of the Knowledge Economy of Government Information (2000) established the policy of licensing and charging at marginal cost for much UK government information. There were certain exceptions to this, notably government trading funds. The position is set out in Annex 6.2 of HM Treasury's *Managing Public Money*<sup>11</sup>. The PSI Directive set the relevant ceiling on charges at full cost recovery plus a reasonable return on investment, with total income from supplying and allowing the re-use of documents not to exceed the cost of collection, production, reproduction and dissemination with a reasonable return on investment.

**3.21** Your views on the proposed approach are sought in this consultation.

### **Datasets provisions of the Freedom of Information Act**

- 3.22** Transposing the amending Directive will also require separate consideration of whether there may be a need for amendment to the provisions on the release and re-use of requested datasets under the Freedom of Information Act 2000 (FOIA) as amended by section 102 of the Protection of Freedoms Act 2012. This work has yet to be progressed and is not discussed further in this consultation.

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<sup>11</sup> HM Treasury, [Managing Public Money](#), which gives guidance on how to handle public funds.



# 4

## How to respond to this consultation

- 4.1 This consultation is being conducted in line with the Government's published *Consultation Principles*, and with the Department for Business, Innovation and Skills *Transposition Guidance: How to implement European Directives effectively*

### How to respond

- 4.2 The questions asked in this consultation are included in Chapter 2.
- 4.3 Responses should be sent by 07 October 2014 by e-mail to:  
[standards@nationalarchives.gsi.gov.uk](mailto:standards@nationalarchives.gsi.gov.uk)

or by post to:

Standards Department  
The National Archives  
Bessant Drive  
Kew  
Richmond  
Surrey  
TW9 4DU

- 4.4 Paper copies of this document may be obtained free of charge from the above address. This document can also be accessed from:
- GOV.UK website ([https://www.gov.uk/government/publications?publication\\_filter\\_option=consultations](https://www.gov.uk/government/publications?publication_filter_option=consultations))
  - The National Archives' website (<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/psi-directive-transposition/consultation/>);
  - NIDirect (<http://www.nidirect.gov.uk/featured-consultations>); and
  - the Scottish Government Website (<http://www.scotland.gov.uk/Topics/Economy/digital/digitalservices/datamanagement/datainnovation/OpenDataReuseofPSIUK>).
- 4.5 All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations. When responding please say if you are a business, individual or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

## Confidentiality

- 4.6 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), the Environmental Information Regulations 2004, and the Freedom of Information (Scotland) Act 2002 (FOI(SA)) and the Environmental Information (Scotland) Regulations 2004.
- 4.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on The National Archives.
- 4.8 The National Archives will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## What happens next?

- 4.9 The National Archives will publish a summary of responses to this consultation within two months of the closing date. The summary will be anonymised and individual respondents will not be recognisable in the summary. The amending

Directive requires Member States to adopt and apply the measures by 18 July 2015.

## **Consultation Principles**

- 4.10 This consultation is being run in accordance with the Government's Consultation Principles, available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

# A Impact Assessment

- A.1** The Impact Assessment<sup>12</sup> appraises the economic costs and benefits of the policy proposals to implement the amending Directive. The overall assessment is that the proposals would be close to zero net overall cost. It is also likely that there will be non-monetised benefits to businesses and civil society organisations. This is because the amending Directive places obligations on public sector bodies to the advantage of businesses and civil society organisations. There are likely to be some limited financial costs for the establishment of the impartial review body (article 4 of the amending Directive), as outlined in chapter 5 of the Impact Assessment.
- A.2** The analysis suggests that the net financial impact on society of the various options for implementation is broadly neutral across options. The potential costs of setting up and running the redress mechanism, and the possibility of a loss of existing revenue to public bodies are judged at this stage to be negligible. However, the assessment has also identified benefits which are difficult to quantify. These include increased transparency and accountability in the conduct of government; more effective use of public services by citizens, due to increased availability of information; and increased availability of material for research and development, which may assist entrepreneurship.

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<sup>12</sup> The Impact Assessment is available from [https://www.gov.uk/government/publications?publication\\_filter\\_option=consultations](https://www.gov.uk/government/publications?publication_filter_option=consultations) or from The National Archives website <http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/psi-directive-transposition/consultation>.

# B

## List of organisations consulted

**B.1** In addition to being made available through GOV.UK, NI Direct, the Scottish Government website and on The National Archives' website, this consultation has been sent directly to the following organisations to invite their comments. Many of them were involved in developing these proposals since the amending Directive was adopted.

### **Representative and professional bodies**

**Advisory Panel on Public Sector Information**  
**Arts Council England**  
**Association of Charter Trustees and Charter Town Councils**  
**Association of Chief Police Officers**  
**The British Library**  
**Campaign for Freedom of Information**  
**Chief Fire Officers' Association**  
**Chartered Institute of Library and Information Professionals (CILIP)**  
**Clinical Practice Research Datalink**  
**Convention of Scottish Local Authorities**  
**Culture and Heritage Directorate, The Scottish Government**  
**CyMAL**  
**Department of Culture, Arts and Leisure, Northern Ireland Executive**  
**English National Park Authorities Association/Joint National Park Officer Group**  
**Health and Social Care Information Centre**

**Inform**  
**Information Commissioner's Office**  
**Intellect UK**  
**Local Government Association**  
**The Museums Association**  
**National Association of Local Councils**  
**NHS England**  
**National Institute for Clinical Health Excellence**  
**National Museum Director's Council**  
**National Records of Scotland**  
**Northern Ireland Local Government Association**  
**Office of the Scottish Information Commissioner**  
**Open Data Institute**  
**Open Data User Group**  
**Open Knowledge Foundation**  
**Open Rights Group**  
**Public Health England**  
**Public Record Office of Northern Ireland**  
**Public Sector Transparency Board**  
**Society of Chief Librarians**  
**Society of Local Council Clerks**  
**Welsh Local Government Association**



# First-tier Tribunal overview

- C.1** The First-tier Tribunal and the Upper Tribunal were created by the Tribunals, Courts, and Enforcement Act 2007. The First-tier Tribunal<sup>13</sup> is part of Her Majesty's Courts Service. It has its own procedure rules and hears appeals on a wide range of matters including environmental matters.
- C.2** The First-tier Tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure the cases are dealt with in the interests of justice and in a manner which minimises parties' costs. The composition of a Tribunal is a matter for the Senior President of Tribunals to decide and may include non-legal members with suitable expertise or experience in an appeal in addition to Tribunal judiciary.
- C.3** The First-tier Tribunal is divided into several different chambers. The General Regulatory Chamber brings together various different jurisdictions of a regulatory nature.
- C.4** If the First-tier Tribunal is selected as the appropriate body to hear appeals in these matters then it would operate under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. The General Regulatory Chamber rules can be

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<sup>13</sup>Further details of the First-tier Tribunal procedure can be found at <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/environment/index.htm>

found at: <http://www.justice.gov.uk/tribunals/rules>. Rule 2 of the General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the Tribunal judge wide case management powers in order to achieve these objectives.

- C.5 The Tribunal may also hear an appeal either orally in a court room or determine the matter on the papers only. This latter written procedure is used if both parties agree that the Tribunal may determine the appeal on the papers without holding a full hearing and the Tribunal is satisfied that it can determine the issues without one. Any party to a case has a right to appeal to the Upper Tribunal on points of law arising from a decision of the First-tier Tribunal. The right may only be exercised with the permission of the First-tier Tribunal or the Upper Tribunal. Where permission is given, the further appeal would be made to the Upper Tribunal.
- C.6 Under the Rules the First-tier Tribunal has the power to award costs against a party where it considers that a party has acted unreasonably in bringing, defending, or conducting the proceedings.
- C.7 The Lord Chancellor has the capacity to charge fees for appeals to the First-tier Tribunal, for example an application fee. Where he is proposing to introduce fees he is required to consult the Senior President of Tribunals. Following this, any such proposal would be subject to secondary legislation that would need to be debated and agreed by both Houses of Parliament before it would take effect.
- C.8 The Tribunal also has powers to prohibit the disclosure or publication of information or documents, and to give a direction prohibiting disclosure of information to a person if the disclosure were likely to cause someone serious harm and it is proportionate to give such a direction.