

SUMMARY OF RESPONSES TO THE CONSULTATION DOCUMENT ON IMPLEMENTATION OF EUROPEAN DIRECTIVE ON THE RE-USE OF PUBLIC SECTOR INFORMATION

1. INTRODUCTION/EXECUTIVE SUMMARY

In September 2003, the Department of Trade and Industry (DTI) and Her Majesty's Stationery Office (HMSO) published a consultation paper on the implementation of a European Directive (2003/98/EC) on the re-use of public sector information. It was published on the DTI: http://www.dti.gov.uk/industries/digital_content/downloads.html HMSO: http://www.hmso.gov.uk/archives/policy/ria_consultation_03.htm and Office of the Queen's Printer for Scotland (OQPS): http://www.oqps.gov.uk/copyright/ria_consultation_03_archive.htm websites. It was also made available via UK-Online. In addition, the document was sent to a number of key players in both the private and public sectors. There were also a series of meetings and discussions with key players in the private and public sectors that assisted the consultation process. The consultation period closed on 4 December 2003.

We received 27 responses to the consultation paper. We are very grateful to everyone who took the time to comment

This paper summarises the responses to the consultation. One organisation requested that its response should be treated as confidential. The other responses may be viewed on HMSOnline: http://www.hmso.gov.uk/copyright/policy/ria_responses.htm and on the OQPS: http://www.oqps.gov.uk/copyright/ria_responses.htm websites.

In summary:

- All of the respondents from the private sector favoured the formal regulatory enforcement option whereas most public sector respondents favoured the light touch approach which relied upon implementation through codes of best practice.
- Some respondents put forward a third option that steered a path between the formal regulatory, and the codes of best practice, options. This could take the form of establishing an independent ombudsman and tribunal for complaints with powers to resolve disputes.
- There was a general consensus that the cost of implementation as outlined in the accompanying partial regulatory impact assessment (RIA) had been significantly underestimated.
- If a regulatory body was established there was strong support for HMSO fulfilling that role although some respondents argued that the licensing and regulatory functions would need to be separated. There was also some support for the regulatory responsibilities to be allocated to the Office of the Information Commissioner given its other information based responsibilities.
- There was support for the Information Fair Trader Scheme (IFTS) as a mechanism to contribute towards best practice on re-use although some respondents expressed a degree of doubt as to whether the IFTS on its own was sufficient.

- There was a general view that there should be an evenness of application across the United Kingdom extending to the devolved administrations. It was also recognised that a common approach should be adopted across the public sector.
- There was support for building on existing best practice, for example, Click-Use on-line licensing and the Information Asset Register.
- Some concerns were expressed about the capacity of some parts of the public sector being able to comply with the obligations set out in the Directive.

2. WHO RESPONDED

In total, 27 responses were received, the breakdown of which was:

Responding party	No of responses
Trade Associations and other intermediaries	7
Business	4
Central Government including government trading funds	7
Local Government and local government representative bodies	4
Other public bodies	3
Individuals	2

3. DETAILED SUMMARY OF RESPONSES

Question A: Do respondents agree with the assessment of advantages and disadvantages set out in the partial RIA?

There was general agreement with the assessment of advantages and disadvantages outlined in the RIA. Other points that emerged were as follows:

- A more open and transparent system on the availability of information, pricing and other factors will provide economic benefits. For example, trading funds were identified as an area where the rules on how they license re-use of documents are not as transparent as they might be.
- A regulator could be the focus for other information policies, such as Freedom of Information.
- The advantages of the light touch regulatory approach are understated particularly with regard to the cost of compliance for the public sector. Equally, there could be advantages to the public sector bodies from the re-use of documents depending on how the directive is implemented.
- The need for an assessment of the IFTS to inform any decision as to whether a formal regulatory approach is needed.
- Implementation will need to take into account the commercial interests of public sector bodies.
- The importance of maintaining the quality and integrity of the information and that public sector bodies will continue to have a role in the dissemination of information.

Question B: Which option do respondents think is the most appropriate and proportionate?

There was a clear division of responses between the private and public sectors. All of the respondents from the private sector favoured the formal regulatory enforcement option whereas most public sector respondents favoured the light touch approach which relied upon implementation through codes of best practice.

The following points were made in support of Option 1 (formal regulatory regime)

- The Code of Practice approach will fail to deliver anything other than litigation.
- Using the courts as a means of enforcing compliance will prove more expensive to the private and public sectors than establishing a proper statutory regulatory regime.
- The code of practice option will damage investment prospects.
- The cost disadvantages of Option 1 can be mitigated by extending the remit of an existing regulatory body.
- The gains to be derived from *effective* compliance are likely to be very high and far outweigh the costs of implementation. The clarity, transparency and certainty that it would create would reduce the overall costs and burden once implemented.
- It will aid any future alignment of access and re-use regimes.
- The self regulation approach, which is somewhat akin to Option 2, has supported the position of the trading funds without assisting SME developers of new products.
- The greater clarity of Option 1 would remove the need for the aggressive and legalistic approach taken by some trading funds.
- SME's require the certainty that their investment can be realised.
- Formal regulation will ensure that public sector bodies, particularly local authorities, will comply. A culture change is needed within the public sector.
- It will provide a monitoring mechanism for providing annual returns to the European Parliament and European Commission.
- It will contribute to the long-term development of the European Information Industry.
- It will achieve the correct level of control and consistency not just in the UK but across the whole of Europe.
- The cost of complying and of regulating compliance must rest with government and not be passed back to the information industry by forcing them to use the courts as a means of redress.

The following points were made in support of Option 2 (implementation through Codes of best Practice)

- It would offer greater flexibility without re-users being disadvantaged. The verification process under schemes such as the IFTS would require public sector bodies to review their practices and procedures.
- It would dovetail into existing Freedom of Information processes.
- Additional costs incurred by adoption of Option 1 will be passed onto users and taxpayers.
- It is non-confrontational, non-adversarial and represents a pragmatic way forward.
- It can be achieved by extension of IFTS to the whole of the public sector.
- There will be a legal requirement to comply with the terms of the Directive and so guidance should be sufficient. This will keep bureaucracy to a minimum.

Question C: Are there any other implementation options that should be considered?

Some respondents advocated a self-regulatory scheme that would be linked to an independent tribunal or ombudsman in order to provide rapid low cost adjudication/resolution of disputes, conceivably within the HMSO/IFTS framework. (Option 3)

Compliance would be mandatory, but Option 3 would *facilitate* compliance by offering a common framework of guidance, standard licences and charging mechanisms. This will provide essential support for bodies such as local authorities new to the issue, and will promote the necessary consistency of compliance. Means of redress will be important, and Option 3 provides a means by which disputes can be settled without recourse to litigation (appealing through the courts is an expensive option seldom justified by the value of the complaint). The tribunal would need to be independent (and so separate from any body providing support/guidance/issuing licences) and low cost, such as the Press Complaints Council and the Copyright Tribunal. It would be preferable to establish a less formal, but effective, means of resolving disputes which avoid the costs of court-like procedures while not prejudicing a claimant's right to pursue big claims through the courts.

A further variation might involve the IFTS and the Information Asset Register being extended to all public bodies by means of setting up a formal regulatory framework.

Question D: Are the costs and benefits identified correct, and are they of the right order of magnitude?

There was a general view that the costs identified in the consultation document had been significantly underestimated. New posts may need to be created solely in order to ensure compliance and to negotiate licences. This applied to both Options 1 and 2. In the case of local authorities the minimum cost to them of implementation could be in the order of £12 million plus training and activity costs. These costs would be considerably greater if extended to parish and community council level.

Question E: Is the assumption that there is no significant cost to the private sector and charity sector valid?

A common public sector view was that any additional costs incurred in setting up a regulatory framework would need to be passed onto private sector re-users or to the taxpayer.

The private sector view was that Option 2 imposes the cost of ensuring compliance by the public sector on the re-user. If disputes cannot be resolved directly with the public sector body concerned, the re-user may, ultimately, need to resort to litigation. In Option 1, it is the public sector (and ultimately the taxpayer) that bears the cost of compliance in the form of establishing and maintaining a regulator. The cost of regulation borne by the public sector in Option 1 is, therefore, transferred to the private sector in Option 2.

One respondent proposed that the special nature of charities should be recognised in terms of having the freedom to obtain a financial return on information that they originate if they have public sector status, and charities generally should be offered concessionary rates as re-users of public sector information.

Question F: Are there any other sectors that will be affected by the implementation of the Directive?

As the Directive advocates the supply and licensing of information in electronic form, one respondent considered that there could be some effect on the printing sector. None of the other respondents identified any other sectors that would be affected.

Question G: Is the estimated cost to the public sector, particularly outside central government, of implementing the Directive accurate?

Some respondents felt that the costs have been underestimated. The extent of the underestimate ranges from an order of magnitude to as much as a factor of ten. One respondent estimated that the cost of compliance for local authorities alone could be of the order of £12million per annum. Another respondent pointed out that the current approximate cost of operating the IFTS across twelve trading funds is £100,000 per annum. To extend a similar scheme across the whole public sector would cost considerably more. In a similar vein, another respondent estimated that the setting up costs for each of the 1,400 public bodies to be in the order of £10 –20,000 giving a total cost of over £20 million plus the cost of maintaining a regulatory regime.

In respect of local authority information, the cost may not be directly proportional to total available resources. For example, district authorities undertake the same business functions as all districts throughout the UK regardless of the size of the authorities and the number of datasets held. This means that to make every set of information available and ready for re-use is proportionately more costly for small authorities than for large ones, whilst the potential income will be the same or lower.

Question H: Would the potential additional estimated costs of Option 1, the regulatory approach, be outweighed by benefits such as certainty of compliance?

As in previous questions there was a clear split between public and private sector views. The private sector was of the firm opinion that any additional costs would be fully justified. The public sector was of the opposite opinion.

Question I: If Option 1 was chosen, is there a possibility that an existing body could be given the regulatory powers?

There was widespread agreement that it made sense to use an existing organisation in such circumstances. If a regulatory body was established there was strong support for HMSO fulfilling that role although some respondents emphasised that the licensing and regulatory functions would need to be separated. There was also some support for the regulatory responsibilities to be allocated to the Office of the Information Commissioner given its other information based responsibilities.

Question J: Is the assumption that adopting best practice such as the Information Fair Trader Scheme will assist public sector bodies in meeting their obligations a reasonable one?

There was support for the Information Fair Trader Scheme (IFTS) as a mechanism that would contribute towards best practice on re-use, although some respondents expressed some doubt as to whether the IFTS on its own was sufficient. Nevertheless, a number of private sector respondents were sceptical about the IFTS, pointing out that it remained largely unproven.

Question K: Are there other issues, particularly affecting Wales, Northern Ireland, regional and local government that need to be taken into account that have not already been covered?

There was general agreement that there should be an evenness of application across the United Kingdom extending to the devolved administrations. It was also recognised that a common approach should be adopted across the public sector.

The following additional points were made:

- The need to take advantage of the new market place by moving closer to the American model and looking at the case for making government publications free of copyright.
- There are several issues specific to implementation in Northern Ireland at local government level including the need for dedicated staff to work within the Northern Ireland Local Government Association (NILGA). Funding would need to be identified and clarification as to whether this is a devolved or reserved matter.
- A local authority representative body made the point that whilst much local government information will be made available for re-use free of charge, there will be circumstances where local authorities will need to charge commercial rates.
- One public sector respondent urged that there should be no charging for data/information between government organisations, and indeed suggested that all government data/information should be available to all users for free.
- Implementation of the Directive should be situated within broader access and re-use policies in the United Kingdom.
- There is a need for commercial activities to be priced in a way that accounts for the financial constraints placed on private sector firms.
- Many of the activities that organisations will need to undertake will parallel Freedom of Information obligations.
- Public sector bodies need to make information available in formats that are understandable and accessible.

4. WHAT HAPPENS NEXT

The government will be considering all the responses to the consultation. Draft regulations, including a clear indication of how the government intends to ensure compliance with the regulations so as to fully implement the Directive, will be issued for consultation in the summer. This will be accompanied by a revised Regulatory Impact Assessment.

January 2004

Adrian Brazier
DTI
151 Buckingham Palace Road
London
SW1W 9SS
Tel: 020 7215 1295
Fax: 020 7215 1370
e-mail: adrian.brazier@dti.gsi.gov.uk

Jim Wretham
HMSO
St Clements House
2-16 Colegate
Norwich
NR3 1BQ
Tel: 01603 723001
Fax: 01603 723000
e-mail: jim.wretham@cabinet-office.x.gsi.gov.uk