The re-use of Public Sector Information

A guide to the regulations and best practice

Practical guidance on applying SI 2005 No. 1515 on the re-use of Public Sector Information Regulations which implement European Directive 2003/98/EC on the re-use of public sector information

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1 Introduction

This Guide to the Regulations and Best Practice explains the provisions of the Re-use of Public Sector Information Regulations (SI 2005 No.1515, subsequently referred to as ‘the Regulations’). It focuses on the obligations on public sector bodies when they allow the re-use of information they hold, providing practical advice and examples of best practice. The Regulations implement Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information (see Appendix 1) subsequently referred to as the ‘Directive’ across the United Kingdom. The Guide also provides stakeholders in the private sector and elsewhere with details of how the Regulations will be applied and how any complaints will be handled. It is anticipated that the Guide will be used as a key reference document by those charged with the review of complaints. The Guide will be updated as best practice evolves.

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

1.2. 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.

1.3. The public sector is by far the largest producer of information in Europe. The European Commission estimates that between 15% and 25% of total data used in e-commerce trading is based on public sector information. This covers a wide range of material, such as national and local legislation, statistics, local planning and tourist information, and
1.4. The Regulations were the subject of public consultations, and this Guide is informed by the responses to consultations and by many workshops and meetings with key stakeholders in the period leading up to implementation.

1.5. Section 2 of the Guide gives the background and context to the Directive and the Regulations, including how it fits with the current domestic legislative framework. Chapter 3 covers the scope of the Regulations, concentrating on the organisations and documents covered by them. Chapter 4 examines the obligations which arise under the Regulations and Chapter 5 describes the complaints process that underpins the Regulations, explaining what recourse re-users and potential re-users have. Chapter 6 provides information about best practice which is currently available in this area and provides public sector bodies with advice on how they can comply with the Regulations.

2 **Background and Context**

**Key Principles and Objectives**

2.1. The purpose of the Regulations is to establish a framework that provides for the effective re-use of public sector information. As the Directive refers to public sector information as documents, we use the same terminology in this Guide. The Regulations are based on the principles of fairness, transparency, non-discrimination and consistency of application.

2.2. It is intended that the Regulations will lead to the following key objectives being delivered:

- the ready identification of public sector documents that are available for re-use
- the availability of many public sector documents for re-use at marginal cost
- clarity of any charges to be made for re-use (with an explanation of basis of the charge being available on request)
- processing of applications for re-use in a timely, open and transparent manner

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1 Source: Commercial exploitation of Europe's public sector information report by Pira International for the European Commission, September 2000
- application of fair, consistent and non-discriminatory processes
- transparency of terms, conditions and licences
- sharing of best practice across the public sector
- establishment of a quick and easily accessible complaints process

**The European Directive on the Re-use of Public Sector Information**

2.3. The Directive was the result of a proposal from the European Commission in September 2002. This recognised that the European information industry was at a significant disadvantage to its American counterpart when seeking to re-use public sector information. Compared with the United States, it was felt the conditions for re-use of public sector information in Europe were opaque and uneven. Nor was it easy to identify documents available for re-use.

2.4. The European Commission proposed a minimum level of harmonisation across the European Union in order to facilitate the more effective exploitation of public sector information as an economic resource. It was anticipated that this would lead to the development of pan-European information products and services.

2.5. Following negotiations in Brussels the European Directive on the Re-use of Public Sector Information was adopted by the Council and the European Parliament on 17 November 2003, and entered into force on 31 December 2003.

**Links with other UK legislation**

**Freedom of Information**

2.6. While there is a clear link between freedom of information legislation and the Regulations, there are significant differences. In the United Kingdom, access by citizens to a large proportion of public sector information is provided under freedom of information legislation\(^2\). There is separate legislation covering Environmental information\(^3\). There are

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other access regimes, such as those under the Water Industry Act 1991 and Local Government Act 1972 which relate to specific kinds of information. All information access regimes are collectively referred to in this Guide as ‘Access to Information Legislation’. The Regulations do not change access provisions; rather they provide a framework for re-use of information once access has been obtained. Accordingly, the Regulations do not apply unless the document has already been provided to an applicant, or is otherwise accessible by means other than by making a request for it under access to information legislation. The provision of information under access legislation does not confer any automatic right to re-use the information.

2.7. There are, however, synergies between the Regulations and Access to Information Legislation in the UK. These include:

- information asset lists: there is scope for asset lists required under the Regulations to be produced in co-ordination with the Publication Schemes required under the Freedom of Information Act 2000 and the Freedom of information (Scotland) Act 2002
- charging: to the extent that there is a correlation between fees charged for access and for re-use, it is important to avoid double charging
- timescales: there is a need for coordination where a request is made for both access and re-use

2.8. These issues are addressed in more detail in Section 4

2.9. The provisions in these Regulations are without prejudice to the Data Protection Act 1998 and to the extent that any applicant has to show or would have to demonstrate a particular interest in a document in order to obtain access to it, the Regulations do not apply.

**Environmental Information Regulations 2004 and the Environmental Information (Scotland) Regulations 2004**

2.10. These regulations give similar rights of access to environmental information as freedom of information legislation gives to other types of public sector information. The main differences between the Environmental Information Regulations (EIR) and freedom of
information legislation are around charging and exemptions. Charges can be made for EIR requests but charges must be reasonable. EIR requests cannot be refused solely on cost grounds. The presumption is that environmental information should be released unless exceptions apply. Under both EIRs and the freedom of information legislation, there are exemptions from the duty to disclose. All but one of the exceptions to the requirement to disclose environmental information are subject to the application of the public interest test, as are most of the exemptions under freedom of information legislation. The synergies and issues between EIR and the Regulations are explored further in Section 4.

Copyright and publishing in the public sector

Copyright

2.11. In the United Kingdom most information produced by the public sector is subject to copyright protection. Documents produced by central government are covered by Crown copyright. The Controller of Her Majesty’s Stationery Office (HMSO) and the Office of the Queen’s Printer for Scotland (OQPS) administer this centrally. In some cases HMSO and the OQPS delegate the licensing responsibility to government departments, notably trading funds. HMSO and OQPS operate from within the wider Office of Public Sector Information (OPSI) (see 2.15 - 2.18).

2.12. Outside central government the public sector body that produces the information generally owns the copyright in it. These organisations have the legal authority to authorise the re-use of the information they produce under UK copyright legislation.

2.13. The Regulations only apply to copyright and related rights (database rights, publication rights and rights in performances). They do not apply to other intellectual property rights, such as patents, trade marks, and design rights.

Publishing

2.14. Public sector bodies often disseminate the information they produce, either by publishing the material themselves or by publishing through a third party publisher. Subject to
ensuring that the material is not published on an exclusive basis (see Section 4) nothing in the Regulations affects how public bodies choose to publish the information they produce.

The Office of Public Sector Information

2.15. The Office of Public Sector Information [OPSI] has been formed from the resource of Her Majesty’s Stationery Office [HMSO]. It has an extended remit to advise on and regulate the operation of the re-use of public sector information. HMSO continues to exist and fulfil its core activities including responsibility for the publication of legislation and the management of Crown copyright operating from with OPSI.

2.16. OPSI is an integral part of the UK implementation of the EU Directive on the re-use of public sector information, with an emphasis on encouraging the information and publishing industries to develop innovative products and services based on public sector information.

2.17. OPSI has a number of key roles in making the Regulations work. These include:

- initiating and sharing best practice across the public sector
- advising and assisting on licensing and publishing issues
- providing a mediation and dispute resolution process

2.18. The role of OPSI in these areas is explained more fully in Section 5 and 6. Contact information can be found in Appendix 3.

3 Scope

Coverage of Public Sector Bodies

3.1. Documents held by most public sector bodies fall within the scope of the Regulations. The definition of ‘public sector body’ within Regulation 3 is based on European public procurement Directives and UK Procurement Regulations.\(^4\) Government departments

including government trading funds,\(^5\) devolved institutions including the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly. Documents held by most National Health Service bodies, local authorities and various non-departmental bodies, such as the Environment Agency, are also covered. An illustrative list can be found at Appendix 2.

3.2. There are some categories of documents that are not within scope of the Regulations, and more information on this can be found at paragraph 3.10.

3.3. For re-use of public sector information purposes, public undertakings such as Royal Mail are not covered by the definition of public sector body.

Documents

3.4. The Regulations define ‘document’ by relating it to ‘content’ which is information recorded in any form. In the UK, public sector information covers a diverse range of information, including:
- primary and secondary legislation
- Official records of the Proceedings of the UK and Scottish Parliaments, the Northern Ireland Assembly and the National Assembly for Wales
- 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 document
- statistics produced by the Office for National Statistics
- annual reports published by government departments, agencies and local authorities
- company information made available through Companies House
- statutory registers such as those for birth, death and marriage and land titles
- patent information collected and produced by the Patent Office

\(^5\) List of government trading funds nationalarchives.gov.uk/information-management/our-services/uk-crown-bodies.htm
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- 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
- technical reports
- local planning information
- regional economic strategies

3.5. 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; by making the information available in statutory registers or provided for a fee as part of a commercial transaction. 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.

Exclusions

Public Sector Bodies

3.6. Regulation 5.(3) excludes documents held by the following types of public sector bodies from their scope:
- public sector broadcasters and their subsidiaries and other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit. This includes the BBC and Channel 4
- educational and research establishments such as schools, universities, archives, libraries and research facilities (such as research councils)
- cultural establishments, including museums, libraries, archives, and performing arts establishments such as opera companies, theatres, ballet companies and orchestras

3.7. Information held by a public sector archive is excluded from the scope of the Regulations if the archive exists, wholly or in part, for educational, research or cultural purposes. Such an archive might be an independent institution or a defined part of a larger public sector body, for example an archive dedicated to research purposes within a local authority. It
may share the educational, research or cultural purposes of the parent body or have its own separate purposes in those areas.

3.8. However, where:
   - a collection of documents is held by a public sector body that is not primarily a research, educational or cultural body; and
   - the documents are kept solely to serve the operational needs of that parent body and for no clearly defined educational, research or cultural purpose

- then it is not an archive under the Regulations. Any documents that are kept in such a collection are subject to re-use if appropriate.

3.9. If an archive exists for educational, research or cultural purposes, all the information held by it is excluded, whether it is among the historical records or among the archive’s own current files. The nature of the information held by the archive is not important; what matters in determining whether the information is excluded are the purposes for which the archive exists.

**Documents**

3.10. There are also categories of documents themselves that are excluded regardless of the type of public sector body that holds them. These are set out in Regulations 5(1) and 5(5) and cover:
   - Documents that fall outside the scope of the public task of the public sector body. This covers those situations where a public sector body produces documents that are not directly related to the core responsibilities of the public sector body. For further details on what is covered by public task, see 3.12 - 3.15
   - Documents containing content in which the relevant intellectual property rights are owned or controlled by a person or organisation other than the public sector body. For example, a public sector body may hold documents that include material where the copyright is owned by a third party. This is frequently the case with photographs and illustrations. However, just because a document includes third party copyright elements, does not preclude the public sector body from authorising the re-use of those elements that are owned by the public sector body. Issues of ownership can also arise in Public/Private Partnerships, and this is dealt with in more detail in 3.18-3.20
below. Occasionally the relevant intellectual property rights may be controlled by a third party, for example, HMSO and the Office of the Queen’s Printer for Scotland (OQPS) manages copyright on behalf of the Crown. In those circumstances, if an applicant applies to a public sector body for re-use of a document that is covered by Crown copyright, the request would have to be directed to HMSO/OQPS, unless the Controller of HMSO or the Queen’s Printer for Scotland has delegated the authority to a public sector body. This mainly applies to government trading funds.

- Documents the content of which are exempt from release under freedom of information, environmental information and any other access legislation. (For detailed advice on FoI please refer to the relevant FoI guidance.) An exception to this rule is where section 21 of the Freedom of Information Act or section 25 of the Freedom of Information (Scotland) Act applies. These sections cover information ‘which is reasonably accessible to the applicant’. For example, documents published on a government website would be exempt from an access request by virtue of being ‘reasonably accessible’ to the applicant already. These documents would normally be available for re-use, and may represent a rich source of material for the private sector. Where a particular interest needs to be demonstrated this does not give a right to re-use.

**Trading Funds**

3.11. A trading fund is part of government which has been established by a Trading Fund Order under the Government Trading Fund Act 1973. Typically, trading funds operate in specialised fields and rely on their ability to derive income from their activities, such as charging for licensing rights to use data in various ways, in order to cover their costs. Accordingly, trading funds are required to develop profitable commercial outlets for their services in order to offset core and central overheads, return a dividend to HM Treasury and raise money for investment. These value-added services are often built around information provided as part of their public task (see 3.13 - 3.15). They must ensure that the information produced as part of their public task which is then re-used for their own commercial services is available to others on the same terms and conditions.

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6 list of organisations with delegated authority from the Controller of HMSO nationalarchives.gov.uk/information-management/ifts.htm
3.12. As explained in paragraph 3.10, documents that fall outside the public task of a public sector body are not within the scope of the Regulations. It may be helpful to consider what is meant by the term public task in more detail.

**Public Task**

3.13. The production of documents may fall outside the scope of a public sector body's public task where they are not directly related to its core responsibility, such as where they are optional commercial products competing in the open market. However, it may not always be a straightforward matter to identify with precision what a public sector body's core responsibilities are, and where the boundary lies between documents within the public task and those that fall outside it. For example, government trading funds are required to develop profitable commercial outlets for their services in order to offset core and central overheads (and they then make a return to the Treasury). These value-added services are often built around information provided as part of their public task. This does not mean that everything they produce, whether of a commercial nature or not, falls firmly within their public task.

3.14. Information produced as part of the public task is likely to feature some of the following characteristics:

- It is essential to the business of the public sector
- It explains the policy of public sector bodies
- It sets out how the law, in both UK and EU, must be complied with
- The citizen will consider the information to be key to their relationship with the public sector
- There may be a statutory requirement to produce or issue such information
- It enjoys an authoritative status by virtue of its issue by the public sector

3.15. As a first step, public sector bodies should consult existing guidance in this area, and a key document will be HM Treasury's ‘Charges for Information: When and How’⁷. This includes some key definitions, including ‘raw data’ and ‘value-added information’.

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⁷ [www.hm-treasury.gov.uk/about/open_government/opengov_charging.cfm](http://www.hm-treasury.gov.uk/about/open_government/opengov_charging.cfm)
3.16. It is reasonable to assume that, where documents most closely relate to the ‘raw data’ definition, they will fall firmly within a public sector body's public task. Value-added information, however, is not automatically outside the public task, though it would be a reasonable working assumption that it was unless there are other persuasive factors arguing otherwise. At either end of the spectrum this is likely to be an easy decision; but there will, however, inevitably be grey areas. Public sector bodies will need to have a clear view as to what constitutes their essential purpose. This might be set out in terms of statutory obligations, for example, or other central tenets of the public sector body's role, and this will need to be separated out from activities that may be a legitimate response to enabling their essential public sector functions to continue.

3.17. Public sector bodies should be aware that a decision as to whether or not something falls within their public task is open to challenge.

Public/Private Partnerships

3.18. Public sector bodies often develop information products and services with partners in the public and private sectors. It is important that it should be made clear to potential re-users if any copyright or other relevant intellectual property rights in such information products capable of re-use are owned by a private sector partner. The public sector body should also make it clear, where known, whom the re-user should contact about re-use. It is good practice for public sector bodies to maintain adequate records of where third party rights rest so that they can respond positively and promptly to applications for re-use.

3.19. Where information that is jointly owned by private and public sector partners and it is impossible to identify the copyright elements owned by each partner, re-users will need the permission of all parties. In some cases the partners may agree to nominate one partner who will have responsibility for authorising re-use.
3.20. Where an information product is jointly developed by two or more public sector bodies, it is advisable to nominate one of the parties to process requests for re-use to avoid unnecessary bureaucracy. This assumes that the public sector bodies have the necessary authority to allow re-use. For example, the licensing of most copyright material produced at central government level is facilitated and managed centrally by HMSO. This does not prevent public sector bodies from separately and individually fulfilling their own obligations to provide information under access to information legislation.

**Wider Markets**

3.21. The Selling into Wider Markets Policy Note was first published in 1998 following the publication of the National Asset Register in 1997, and updated in December 2001. This Policy Note encouraged Departments, agencies and non-departmental public bodies (NDPBs), to make better use of their assets by developing commercial activities using surplus public sector assets. The Wider Markets (WM) policy applies to departments, agencies, trading funds, NDPBs, NHS Trusts, other NHS bodies and most public corporations.

3.22. Selling public assets into WM offers varied opportunities for public bodies to generate commercial income, so supplementing their revenue streams, developing greater commercial awareness, entrepreneurship and realising value for money in the use of their assets.

3.23. Income generation and WM are, however, different. Although a public sector body can recover its costs for statutory services, and generate some income from selling discretionary activities, this does not count as WM. An activity deemed WM must pass the WM tests - be discretionary, use spare capacity (as set out in HM Treasury guidance) and be provided in a market where there is or may be competition for the provision of those services from within the private sector - before it meets the definition and can qualify for WM treatment.

3.24. WM is where public sector bodies commercially charge for a service.
3.25. Public sector bodies should first consider whether an asset is needed to meet core objectives, and if the answer is ‘no’, then it should usually be disposed of. However, if it is still needed for core business but where there is spare capacity, it might be suitable for use under WM (a decision on whether or not to dispose of an asset should not be made on the basis of whether it can used for WM).

3.26. The policy applies to all assets; physical and non-physical. It therefore applies to software, databases, expertise, skills, brands and intellectual property, as well as to physical assets such as equipment, land and premises. Exploiting the commercial potential of these assets can take many forms, including selling existing goods and services, developing new goods and services for sale, licensing arrangements, and sponsorship activities.

3.27. Many WM projects are based on information produced outside the public task of the public sector body. This information falls outside the scope of the Regulations. Other WM projects, however, are based on information that was originally collected for statutory purposes. All charges under WM remain subject to HM Treasury’s Fees and Charges Guide. Details of how freedom of information legislation impacts on WM projects can be found in revised HM Treasury Policy Note.\(^8\) Further clarification about WM can be obtained by contacting the WM Helpdesk at Partnerships UK (see Sources of help at Appendix 3).

4  Public Sector Obligations

Permitting re-use: general principle

4.1  Regulation 7 ‘Permitting re-use’, provides that:

1. A public sector body may permit re-use
2. Where a public sector body permits re-use, it shall do so in accordance with regulations 11 to 16

4.2  In practice, this means that public sector bodies, like other copyright owners, are not under any automatic obligation to allow the re-use of any document they hold. This is in

\(^8\)  [www.hm-treasury.gov.uk/media/ED8AB/New_WM_guidance.pdf](http://www.hm-treasury.gov.uk/media/ED8AB/New_WM_guidance.pdf)
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line with the protection of intellectual property rights, as set down in the Berne Convention. In addition there are a number of other limitations to re-use.

4.3 Although the regulations do not require public sector bodies to permit re-use, there are conditions that apply where they allow re-use to one party, including themselves, for purposes outside their public task (such as in a commercial product). Re-use of a document on an exclusive basis is not generally permitted so the public sector body will need to consider requests from others who may wish to re-use it. A public sector body can, of course, refuse to permit re-use by others for any reason so long as such a refusal is not contrary to any relevant laws such as competition law. The need to consider other requests should, however, focus public sector bodies’ attention on the benefit to all of permitting re-use in many situations. Where re-use is permitted by more than one party, this must be on the same terms and conditions for comparable categories of re-use. This is dealt with in more detail in the section on non-discrimination (see paragraphs 4.18 and 4.19).

4.4 It is an important government policy to encourage the re-use of public sector information for the benefit of business, society and the citizen. The policy for central government in this respect is set out in HM Treasury’s Cross Cutting Review of the Knowledge Economy.⁹

**Request for re-use**

4.5 Regulation 6 explains how a request for re-use should be made, and how it should be transmitted. Applicants should:

- submit requests in writing, which includes email. They must be legible, and usable for subsequent reference. This means it must be in a form that can be filed for future reference (so an email is acceptable, a text message is not)
- give their name and address
- specify which documents they want to re-use

⁹ [www.hm-treasury.gov.uk/spending_review/spending_review_2000/associated_documents/spend_sr00_ad_ccrcontents.cfm?textonly=true](http://www.hm-treasury.gov.uk/spending_review/spending_review_2000/associated_documents/spend_sr00_ad_ccrcontents.cfm?textonly=true)
• state the purpose for which the document is to be re-used

4.6 Many public sector bodies especially those which are significant information traders will have well established processes in place for dealing with applications to re-use information. It will generally be in the best interests of public sector bodies and applicants to use these.

**Responding to a request for re-use**

4.7 Regulation 8 sets out how public sector bodies should respond to requests, including timescales. Response means one of the following:

• refusing to give permission to re-use

• supplying the document to the applicant, if it hasn’t already been supplied under access to information legislation. This might include making the document available by explaining to the applicant where a publication can be obtained. This might be from a website or a publication. In some cases the publication may be charged for

• offering terms and conditions for re-use, often in the form of a licence

Regulation 8 also specifies timescales for dealing with requests for re-use. Re-users will need to be given permission to re-use documents within a reasonable time-frame. There is little point in a potential re-user obtaining permission to use time sensitive information weeks after it is out of date, and public sector bodies need to react accordingly.

4.8 Documents will fall under two broad categories:

**Readily Available Documents**

This covers those cases where documents have already made available. This includes publishing them or identifying them as being available for re-use, perhaps by publishing details on an asset list. Under this scenario an application for re-use would be dealt with normally within 20 working days. If an applicant can show that it already has access to the document, the re-use aspect should be reasonably straightforward.

The Regulations allow public sector bodies up to 20 working days following the date of receipt of the request for re-use to finalise any licence offer. Using on-line licensing
methods and standard terms and conditions will help public sector bodies meet this challenging target. Public sector bodies should note that the same timescales apply equally to published and unpublished documents.

**Previously Unreleased Documents**

This covers unpublished documents and information that has not been identified as being available for re-use.

Permission to re-use is subject to access issues being resolved.

If a request for access and re-use is combined, given the 20 days allowed for responding to a request for re-use, public sector bodies may wish to begin preparing their response so that they are in a position to respond quickly once the access questions have been resolved. An approach that could be adopted is to offer terms and conditions for re-use that are subject to access being agreed. However, if Crown copyright applies and a request is made to HMSO for re-use, HMSO will not be able to respond to any such request for re-use until any access issues have been resolved by the public authority holding the information.

4.9 A key point to bear in mind is that consideration of whether re-use is permitted does not affect the time limit for access to the information under relevant access legislation. For more information on this, please see DCA’s\(^\text{10}\) and Defra’s Guidance\(^\text{11}\). If there is a combined access and re-use request, then it must be dealt with fully in terms of access to the information before a final decision on re-use can be taken.

4.10 Exceptionally, where requests for re-use are extensive in terms of the number of documents requested, or raise complex issues, the public sector body may extend the response time. However, public sector bodies should note that they might be called upon to justify that the time taken to respond is reasonable. Public sector bodies must also let the applicant know before the expiry of the 20 working days that they are unable to

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\(^\text{10}\) [www.dca.gov.uk/rights/dca/foidcaintro.htm](http://www.dca.gov.uk/rights/dca/foidcaintro.htm)

respond to the request within the standard time frame with an indication of when a response can be expected.

Crown Copyright

4.11 Any applications to re-use documents covered by Crown copyright (mostly central government material) should be sent to HMSO (or OQPS in Scotland). This is because HMSO/OPQS have central responsibility for the management of Crown copyright. For example, somebody wishing to obtain and re-use a document held by the Home Office would need to apply to the Home Office for access to the document, and to HMSO for permission to re-use.

4.12 Many parts of central government are an exception to this rule, including Trading Funds, and have the authority to permit the re-use of the documents that they hold. In these cases applications for access and for re-use should be made direct to the body concerned.

Notification of refusal

4.13 Regulation 9 explains what the process should be when a public sector body refuses a request for re-use of a document:

- reasons for refusals should be given in writing
- the public sector body should explain what forms of redress are open to the applicant, both internal and independent
- in cases where refusal is based on the fact that copyright or other relevant intellectual property rights (‘IPRs’) are owned by a third party, the owner of the relevant IPRs should be identified, where known. The same principle applies where the copyright (or other relevant IPRs) in the document is held jointly by the public sector body and a third party
- where the owner of the third party copyright is not known, then the name of the person from whom the document was obtained should be provided, where known. If it is not known, this fact should be stated
Processing requests for re-use

4.14 Regulation 10 provides that public sector bodies should deal with requests, where possible, electronically. Public sector bodies are encouraged to take advantage of existing on-line licensing systems that are available.

4.15 Public sector bodies should make documents available in digital form where possible. It should, however, be noted that Regulation 11 does not require public sector bodies to make the documents available in a format other than in the format or language in which the document already exists (unless it has duties to do so under other legislation such as disability discrimination legislation). For example, if a public sector body held a previously unpublished document in paper format it does not have to convert the document into a pdf format for the purpose of responding to a request for re-use.

4.16 Regulation 11 also confirms that there is no obligation for public sector bodies under these Regulations to:

- create or adapt a document to comply with a request for re-use. The emphasis is on the re-use of existing documents rather than creating new documents or changing existing ones. Freedom of Information legislation places an obligation on the public sector body to provide access to the information in accordance with the preference of the applicant if it is reasonable to do so. The Regulations do not affect the application of Section 11 of the Freedom of Information Act 2000, and in Scotland Section 11 of the Freedom of Information (Scotland) Act 2002
- provide extracts of documents where this would entail disproportionate effort. This can be illustrated with reference to mapping data, which is often arranged as products which are fit for purpose for the majority of users in the wider market. To take one small piece of data from a complex database may prove to be a demanding task that is resource intensive and difficult for the public sector body to justify
- continue producing a document purely for re-use by others. This means that once a document is no longer useful or needed to meet the policy aims of a public sector body, it is free to stop producing it
However, the public sector body should endeavour to alert re-users that such a decision has been taken.

**Conditions**

4.17 Regulation 12 allows public sector bodies to set conditions on re-use of documents. Where conditions are set they should not unnecessarily restrict the way in which a document can be re-used. Nor should they seek to restrict competition between re-users, including where the public sector body itself is a re-user.

**Non-discrimination**

4.18 Regulation 13 states that public sector bodies must not discriminate in the conditions applied between applicants who re-use documents for similar purposes. The emphasis is on the use of the documents rather than the re-user. This means that a private sector company and a charity should be treated in the same way if the purpose of the re-use is for commercial gain. The same approach would apply if the documents are re-used for non-commercial purposes. The only exception to this is where a particular user or groups of users have a statutory right to re-use material. For example, libraries, archives and educational establishments enjoy special privileges under the Copyright, Designs and Patents Act 1988, which also includes special provisions for the reproduction of material for visually impaired persons.

4.19 Regulation 13 also makes it clear that there needs to be a level playing field in place between the public sector body and other re-users. This applies in those circumstances where a public sector body decides to use a document beyond the purpose for which it was originally produced, perhaps for commercial exploitation. In these cases it is important that the public sector body applies the same terms to itself, or to any associated body, as to any other re-user. One way that public sector bodies could ensure that they comply with this principle is to consider the amount they would charge an outside re-user.

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for the re-use of the document. They should then apply the same charge to themselves in setting the price of their value added product.

**Prohibition of Exclusive Arrangements**

4.20 The Regulations are intended to stimulate the development of the information industry through the development of a range of innovative information products and services. Exclusive arrangements with one re-user will restrict competition and are not ordinarily permitted.

4.21 Regulation 14 sets out the principle that public sector bodies should not enter into exclusive arrangements because it prevents others from re-using the document and inhibits competition. This covers appointing publishers to publish versions of documents endorsed by public sector bodies as well as licences covering the re-use of the document. For example: a local authority decides to produce a tourist guide. It produces the text and other material for inclusion, and following a competitive tendering process the authority appoints a commercial publisher to publish the work. If the local authority granted the publisher the exclusive right to publish the material, it would mean that nobody else would be able to publish the material. This is different from granting a publisher the rights to publish the official version of the tourist guide on behalf of the authority. This would leave the way open for others to re-use the content in other ways, including competing versions of the tourist guide.

4.22 There is an important exception to this principle. Where a service in the public interest cannot be provided other than by means of granting an exclusive licence this is permitted. This could be the case, for example, if a public sector body has completed a competitive tendering exercise and is able to demonstrate that without exclusive rights no commercial publisher would be prepared to publish the document and this would adversely affect provision of a service in the public interest.

4.23 If a public sector body does need to enter into an exclusive arrangement (that is, one referred to in paragraph 4.21) then it must publish the terms of the arrangement, and regularly review the justification for it (at least every three years). This will need to take
into account issues of commercial confidentiality and will apply to arrangements entered into after 31 December 2003 (the date the Directive came into force).

4.24 Regulation 14 also provides for transitional arrangements once the Regulations come into force. Where the provision of a service in the public interest as set out in paragraph 4.22 is not at stake then any exclusive arrangement must end when the contract expires, or by 31 December 2008, whichever is the earlier.

Charging

4.25 There is no obligation on a public sector body to charge for re-use. However, Regulation 15 provides that where charges are made, the total income should not exceed the cost of collection, production, reproduction and dissemination of documents and a reasonable return on investment. As so much material held by public sector bodies is available in digital format, often by being published on the internet, the costs of allowing re-use will often not involve any additional cost to the public sector. Indeed, the cost of raising a charge will in many cases be uneconomic. However, the Regulations allow for public sector bodies to charge a commercial rate for the re-use of documents. This will be particularly applicable to public sector bodies that are required to operate in a commercial manner in order to cover their costs. This includes government trading funds.

4.26 Some public sector bodies have a power to charge a commercial rate for the re-use of documents. This will be particularly applicable to public sector bodies that are required to operate in a commercial manner in order to cover their costs. Where this applies, the charges should cover the costs of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be based on applicable accounting principles. The accounting cycle will depend on the anticipated useful economic life of a set of documents. Neither the Regulations nor the Directive define what is meant by a reasonable return on investment, and this will depend on the particular circumstances and the costs incurred of developing specific products and services. However, public bodies should bear in mind that they may be challenged to justify the charges that they apply [see Section 5]. If a charge for re-use includes an element for supplying the document, and this is or has also been the subject of a request under Access to Information Legislation, then the access fee (that charged for determining
whether the information is held, locating and retrieving the information, and extracting the information from other documents) should be deducted from the fee for re-use. Public sector bodies should not double-charge for the same activity. Charges for research, undertaken in providing a document, can continue to be charged for under the relevant access legislation.

4.27 Public sector bodies should publish standard charges and terms and conditions for re-use. Public sector bodies will be expected to explain, if challenged, the process by which the standard charges were arrived at, and the factors that were taken into account in calculating charges for other cases where standard charges do not apply. Existing guidance is available on this from HM Treasury, The Fees and Charges Guide, 1992 and Selling into Wider Markets: A Policy Note for Public Bodies.

Information to be published by a public sector body

4.28 It is essential that public sector bodies should be open, transparent and fair in processing applications for re-use. Regulation 16 will require them to publish asset lists, standard licence terms, and details of any charges, electronically where possible. Information on help and best practice on standard licence terms and asset lists is described in Chapter 6.

4.29 It is also important that public sector bodies should publish details of how applicants can make a complaint or seek a review of a decision. This is addressed in more detail in paragraphs 4.30-4.32 and Chapter 5.

Internal complaints procedure

4.30 It is important that all public sector bodies operate an effective procedure to consider any complaints that arise from the application of these Regulations. It should be made transparent to users how complaints will be handled, and where complaints should be sent. It should also be clear how long it will take to respond to complaints. Regulation 17 requires public sector bodies to respond to a complaint ‘within a reasonable time’. A

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13 available from: www.partnershipsuk.org.uk/widermarkets/Guidance/2003 or www.hm-treasury.gov.uk/media/ED8AB/New
public sector body should aim to respond within 20 working days unless there are good reasons why this is not possible.

4.31 All complaints must be made in writing, and the public sector body’s response to the complaint will also be in writing, giving reasons for their decision.

4.32 Re-users should complain direct to the public sector body that is the subject of the complaint in the first instance, providing all relevant information. However, if the internal process fails to resolve the complaint, there is a complaints process that has been established under the Regulations. The main features of the complaints process are described in Section 5.

5 Independent Complaints Procedure

Introduction

5.1 This chapter explains what happens if the public sector body’s own complaints process is unable to resolve the issue to the satisfaction of the complainant.

5.2 Regulations 18-21 set out the framework for the resolution of complaints that could not be resolved via the public sector body’s own internal complaints procedure. This additional complaints process aims to deliver:

- independence, ensuring the confidence of all parties and the public
- speed, ensuring that a recommendation is made within a reasonable timeframe that should be significantly shorter than would be the case for legal action
- a lower cost alternative to legal action

5.3 It is intended that this will benefit both public sector bodies and re-users, since it is in the interests of both to have recourse to an independent, quick and low-cost alternative to legal action. It does not preclude recourse to the courts at any time by the complainant, or referring issues to regulatory bodies such as the Office of Fair Trading or the Office of the Information Commissioner.
5.4 **The independent complaints process will only consider issues of re-use**, and will not consider questions of access, which will remain with the Office of the Information Commissioner (OIC) or in Scotland the Office of the Scottish Information Commissioner. As a general principle, any request for both access and re-use which results in an appeal will be first heard by the OIC or its Scottish equivalent, to determine whether the access decision was correct. Only after this access decision has been reached will the re-use complaint be heard by OPSI/APPSI. OPSI will establish protocols with the Office of Fair Trading, the Office of the Information Commissioner and the Office of the Scottish Information Commissioner. These will be published on OPSI’s website.

**How the complaints process will work**

5.5 OPSI has a central role to play in resolving complaints. A link to a detailed description of this role can be found at [Appendix 1](#).

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

5.6 The Advisory Panel on Public Sector Information (APPSI) is a Non-Departmental Public Body, established by the Cabinet Office in April 2003. To reflect APPSI’s expanded role to include the area of dispute and complaints resolution and the terminology used in the Regulations, APPSI’s terms of reference are to:

- advise Ministers on how to encourage and create opportunities in the information industry for greater re-use of public sector information
- advise the Director of the Office of Public Sector Information and Controller of Her Majesty's Stationery Office about changes and opportunities in the information industry, so that the licensing of Crown copyright and public sector information is aligned with current and emerging developments
- review and consider complaints under the Re-use of Public Sector Information Regulations 2005 and advise on the impact of the complaints procedures under those regulations

5.7 A link to the document describing APPSI’s role in resolving complaints is available at [Appendix 1](#).
6 Best Practice

Introduction

6.1 Much has already been done within central government and elsewhere to produce a set of best practice tools and help designed to enable public sector bodies to meet the requirements of the Regulations. A list of places to go for advice and assistance is included at Appendix 3. This chapter looks in some detail at what is available in the key areas of records and archives, asset lists and licensing. It also highlights the Information Fair Trader Scheme\(^\text{14}\) as a useful way for public sector bodies to verify that they are meeting their requirements under the Regulations.

Records and archives

6.2 The records of any public body, whether they are recent ones held in the public sector body’s offices or older ones in an archive, are vitally important materials. They inform the public sector body itself about its legal position, its past practices and decisions, its commercial and business relationships, its relationships with those who use its services or products and its acquisition and use of money and other resources. They also inform the public about the same issues, and enable analysts, historians and students to investigate how the public sector body operates and has operated, and its role in its own sphere and in the world at large.

6.3 All these uses of the public sector body’s records require them to be original, intact and entire. The user must have the assurance that the information contained in the records genuinely comes from the stated source, is reliable, accurate and authentic and that the version stated to be original has not been altered or manipulated. Without such assurance, no reliance can be placed on the public sector body’s word, investors and creditors will be wary, users will be doubtful, and analysts and historians will be critical. Without such assurance, the public sector body could find itself in legal difficulties, since the records are the basis of any legal claim or defence. Sometimes the records will have a special statutory status, as do public records, but all are dependent on an assurance of

\(^{14}\) nationalarchives.gov.uk/information-management/ifts.htm
their integrity. With the advent of all-electronic records, the potential problems become all the more pressing, as the risk of change and loss is so much greater. Effective records management is central to the integrity of public sector information and can make the re-use process simpler.

6.4 The publication of records, or information from them, while they are still available for active use within the organisation, can create difficulties which could endanger the vital assurance in their integrity. Any arrangements for the licensing of re-use of the records must therefore be carefully controlled and in accordance with records management standards. This requires close co-ordination of the work of licensing staff with that of records managers and archivists. Guidance on records management is available from The National Archives\textsuperscript{15}:

**Information Asset Lists**

6.5 Regulation 16 contains an obligation to publish a list of main documents available for re-use. This can be achieved by producing information asset lists. An information asset is any information item that a public sector body produces that is of interest or value to the organisation itself, and potentially to others. An asset list is simply a register of these information assets, usually categorised using a standard classification method.

6.6 The first step to re-using public sector information is to know what documents are available for re-use. Public sector bodies should produce asset lists that provide details of what is available, how the information can be obtained and the terms and conditions of re-use.

6.7 Some public sector bodies already publish clear and transparent information to help re-users find documents to re-use. Often these information sources have been developed as publication schemes to meet their obligations under freedom of information legislation. While the obligations under freedom of information and the production of asset lists under

\textsuperscript{15} nationalarchives.gov.uk/information-management/projects-and-work/information-records-management.htm
these Regulations are not synonymous, there are, nevertheless, synergies between the two. Public sector bodies should consider ways in which they can meet these obligations in a way that avoids unnecessary duplication of effort and also provides potential re-users with a one stop shop in terms of finding out what information is available. It would make sense for public sector bodies that are covered by both freedom of information legislation and the Regulations to refer to asset lists in their Publication Schemes. In due course the Information Commissioners will produce good practice guidance to this effect. In some instances however, the public sector body may consider that their asset list constitutes a class of information under its publication scheme. The Information Commissioners take the view that that would be a decision that is entirely at the discretion of the public sector body.

6.8 OPSI has the policy lead for the Information Asset Register (IAR) which is used widely across central government as a way of identifying and accessing asset lists. OPSI is developing a model for the next generation IAR with advanced search capabilities 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 link existing and emerging information initiatives and polices 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 links with other information policy, particularly freedom of information publication schemes. Further information on how the IAR model can be developed and adapted across the wider public sector is available.16

6.9 Wide variance in practice between public sector bodies when producing asset lists can create problems for potential re-users who are seeking to use documents from a range of public sector sources. OPSI is planning to review the practice in this area with a view to introducing common standards across the public sector. This might involve the development of a standard format that public sector bodies will be encouraged to use.

16 www.opsi.gov.uk/psi
Licensing

6.10 It is not compulsory to use licences to permit the re-use of documents. Where licences are used, however, public bodies should address the following points:

- the licence terms should be applied fairly and openly to all applicants
- the licence terms should not be anti-competitive
- the licence terms should in the interests of transparency be published, preferably online
- generally, licences should be available in a digital format and processed electronically

6.11 Standardisation of licences should 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. In 2001, HMSO launched the Click-Use Licence developed in consultation with private sector re-users 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. OPSI has developed a set of standard licence terms that public sector bodies can use and adapt. A link to these terms can be found at Appendix 1.

Information Fair Trader Scheme

6.12 In allowing re-use of documents public sector bodies are required under the Regulations to be transparent, fair, open and non-discriminatory. OPSI has developed best practice in this area that will be helpful to the wider public sector in meeting their obligations. The Information Fair Trader Scheme (IFTS) was introduced in 2002 to support various UK policy initiatives that sought to encourage the re-use of Crown copyright material and other public sector information.

6.13 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.

6.14 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 has procedures and policies in place to enable them to comply with the first three principles and
● challenge - that the organisation has a robust complaints procedure

6.15 Full IFTS verification was developed in 2002 to ensure full compliance with the principles of fairness, transparency and openness 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. Full IFTS verification for the major information traders involves site visits and detailed audits. If the organisation is successful then full accreditation is awarded.

Since 2004, the focus of IFTS has shifted from verifying major information traders such as Ordnance Survey and the Met Office to the licensing of all public sector information. Recognising that one size does not fit all, OPSI have developed a flexible Online Assessment Scheme which reflects the diverse range of public sector bodies covered by the Regulations. This is a clear and transparent system which provides a framework for implementing the Regulations. IFTS is a recognised benchmark which helps public sector bodies publicly demonstrate that they have met certain standards and is serious about meeting its obligations. For further information on IFTS see nationalarchives.gov.uk/information-management/ifts.htm

7 Conclusion

7.1 The Regulations provide the framework that will make the process of re-using public sector information easier and more transparent. We hope this Guide will assist public sector bodies on complying with the Regulations. As policy and good practice in this area develops, OPSI will publish updates to this Guide. We therefore welcome comments for improving the Guide. We particularly welcome examples of best practice that we can share across the public sector. Send your views and comments to:
The National Archives, Information Policy Division, Kew, Richmond, Surrey
Tel: +44 (0) 20 8876 3444
Appendix 1 Links to Related Documents

The Re-use of Public Sector Information Regulations 2005
www.opsi.gov.uk/si/si2005/20051515.htm

EU Directive on the Re-use of Public Sector Information

Northshire County Council: a fictional case study

Click-Use Licence – Free Licence for Public Sector Information

Click-Use Licence - Charged Licence for Public Sector Information

Procedures for investigating complaints arising under the Re-use of Public Sector Information Regulations 2005

Advisory Panel on Public Sector Information - Procedures for reviewing Complaints arising under the Re-use of Public Sector Information Regulations 2005
www.appsi.gov.uk/complaints-resolution/psi-complaints-procedure.doc
Appendix 2 Illustrative list of bodies whose documents fall within the scope of the Regulations

This is an illustrative list of the public sector bodies (and categories of bodies) that hold documents that fall within the scope of the Regulations. It will be amended from periodically.

- Central government departments, including government trading funds
- The House of Lords
- The Northern Ireland Assembly
- The National Assembly for Wales
- The Scottish Parliament
- The Scottish Parliamentary Corporate Body
- The armed forces of the Crown, except-
  - The special forces, and
  - any unit or part of a unit which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in the exercise of its functions
- Local authorities namely-
  - In England, a county council, a London borough council, a district council or a parish council,
  - In Wales, a county council, a county borough council or a community council
- A district council within the meaning of the Local Government Act (Northern Ireland) 1972
- An assessor appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994 (c.39)
- A council constituted by section 2 of that Act
- The Greater London Authority
- The Environment Agency
- The Common Council of the City of London, in respect of information held in its capacity as a local authority, police authority or port health authority
- The Council of the Isles of Scilly
- Fire authorities
- A joint authority established under Part IV of the Local Government Act 1985 (fire services, civil defence and transport)
- The London Fire and Emergency Planning Authority
- A joint fire authority established by virtue of an order under section 42(2) of the Local Government Act 1985 (reorganisation of functions)
- The Broads Authority established by section 1 of the Norfolk and Suffolk Broads Act 1988
- National Park authorities

THE NATIONAL HEALTH SERVICE

- Health Authorities
- Primary care trusts
- National Health Service trusts
- Community Health Councils
- Health and Social Services Boards
- Health and Social Services Councils
- Health and Social Services Trusts
- The Northern Ireland Central Services Agency for the Health and Social Services
- The Clinical Standards Board for Scotland
- The Common Services Agency for the Scottish Health Service
- Health Boards
- The Health Education Board for Scotland
- The Health Technology Board for Scotland
- Local health councils
- National Health Service trusts
- NHS 24
- The Scottish Health Advisory Service
- The Scottish Hospital Trust
- The State Hospitals Board for Scotland

**POLICE**

- A police authority established under section 3 of the Police Act 1996.
- The Metropolitan Police Authority established under section 5B of the Police Act 1996
- The Police Authority for Northern Ireland
- The Ministry of Defence Police established by section 1 of the Ministry of Defence Police Act 1987
- A joint police board constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967 (c.77).
- The Police Advisory Board for Scotland

**NON MINISTERIAL OFFICE HOLDERS IN THE SCOTTISH ADMINISTRATION**

- Her Majesty's Chief Inspector of Constabulary
- Her Majesty's Chief Inspector of Prisons for Scotland
- Her Majesty's Inspector of Fire Services for Scotland
- Her Majesty's inspectors of schools
- The Keeper of the Records of Scotland
- The Keeper of the Registers of Scotland
- A procurator fiscal
- The Queen's Printer for Scotland
- The Registrar General of Births, Deaths and Marriages for Scotland
- The Accounts Commission for Scotland
- The Advisory Committee on Sites of Special Scientific Interest
- The Ancient Monuments Board for Scotland
- An area tourist board established by virtue of section 172(1) of the Local Government (Scotland) Act 1994 (c.39)
- Audit Scotland
- The Auditor General for Scotland
- The Central Advisory Committee on Justices of the Peace
- Highlands and Islands Enterprise
- The Historic Buildings Council for Scotland
- The Local Government Boundary Commission for Scotland
Appendix 3 Sources of help

The National Archives nationalarchives.gov.uk for policy advice on re-use of public sector information, best practice the complaints process under the Regulations, Licensing of Crown copyright and preservation of public records:

The National Archives, Kew, Richmond, Surrey TW9 4DU
Tel: 020 8876 3444

Partnerships UK www.partnershipsuk.org.uk Wider Markets policy:

Partnerships UK, 10 Great George Street, London SW1P 3AE
Tel: 020 7273 8384

Office of the Information Commissioner for England and Wales www.informationcommissioner.gov.uk Freedom of Information and Data Protection issues for England & Wales:

Office of the Information Commissioner for England and Wales, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel: 01625 545 745

Office of the Scottish Information Commissioner www.itstpublicknowledge.info Freedom of Information and Data Protection issues for Scotland: Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife KY16 9DS

Department for the Environment, Fisheries and Rural Affairs (Defra) www.defra.gov.uk


Office of Fair Trading (OFT) www.oft.gov.uk Competition issues:

OFT, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX
Tel: 08457 22 44 99