

EXPLANATORY MEMORANDUM TO
THE FREEDOM OF INFORMATION (RELEASE OF DATASETS FOR RE-USE)
(FEES) REGULATIONS 2013

2013 No. 1977

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 When releasing a dataset¹ under the Freedom of Information Act 2000 (“the 2000 Act”), public authorities are required in circumstances set out in that Act to release them in a re-usable format and, where they own the copyright, to make them available for re-use under licence. These regulations enable public authorities to charge a fee for making such datasets available for re-use and prescribe the manner in which such fees are to be determined.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 102 of the Protection of Freedoms Act 2012 (“the 2012 Act”) inserted new subsection (1A) in section 11 (means by which communication to be made) of the 2000 Act. This provides that datasets held by public authorities and requested under the 2000 Act must, where the Act requires their release, be released in a reusable electronic format so far as it is reasonably practicable to do so. Further, the 2012 Act inserted into the 2000 Act a new section 11A (release of datasets for re-use). This requires public authorities which release datasets in response to a request under the 2000 Act to make available for re-use under licence any such dataset which is a relevant copyright work² of which they are the only owner. The 2012 Act also amends section 19 of the 2000 Act to provide that a publication scheme required to be operated by a public authority must enable access to datasets unless to do so would be inappropriate. Where a dataset made accessible in this way is a relevant copyright work it must be made available for re-use under licence.

4.2 New section 11B provides a power for the Secretary of State to make regulations which enable public authorities to charge a fee in relation to the release of all such datasets for re-use. Under section 11B(2) regulations may, amongst other things:

i) prescribe cases in which fees may, or may not, be charged;

¹ “Dataset” has the meaning given by section 11(5) of the 2000 Act, as inserted by section 102(1) and (2)(c) of the 2012 Act.

² “Relevant copyright work” has the meaning given by section 11A(8) of the 2000 Act, as inserted by section 102(1) and (3) of the 2012 Act.

ii) prescribe the amount of a fee or prescribe the manner in which a fee is to be determined; and

iii) require the provision of information about how fees are determined.

4.3 Separately, regulations have been made under section 2(2) of the European Communities Act 1972 for making public sector information available for re-use more generally: the Re-use of Public Sector Information Regulations 2005 (SI 2005/1515 – the “RPSI Regulations”). The RPSI Regulations implement Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information. In doing so, the RPSI Regulations make general provision for fees to be charged for the re-use of public sector information.

4.4 Prior to the making of these Regulations the RPSI Regulations applied where datasets (which are a sub-set of public sector information) released under the 2000 Act were, on a discretionary basis, made available for re-use. However, the amendments made by the 2012 Act to the 2000 Act and the new Regulations will now provide a distinct regime for making datasets available for re-use and for charging a fee which, for that purpose only, apply instead of the RPSI Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In May 2010, the Government set out its commitment to establish an enhanced right to data, so that it was clearer that Government-held datasets could be requested and, if disclosed, should be capable of re-use. This policy was implemented through the amendments to the 2000 Act described above. The amendments bring together under one roof the right to request access to datasets under the 2000 Act and the right to re-use them under the RPSI Regulations.

7.2 These Regulations set out the basis on which a fee can be charged for making certain datasets available for reuse. As datasets are a sub-set of public sector information the key policy driver is that the approach taken by the Regulations should implement Article 6 (principles governing charging) of Directive 2003/ 98/EC. The Government has already implemented that Directive through the RPSI Regulations. Regulation 15 of the RPSI Regulations deals specifically with charging. Accordingly, these Regulations make equivalent provision to, and have the same legal effect as, Regulation 15 for public authorities subject to the 2000 Act.

7.3 The Regulations establish the principles which are to be taken into account when charging a fee. Principally, the amount of a fee must not exceed the cost of

collection, production, reproduction and dissemination of documents, and a reasonable return on investment. A fee should, so far as is reasonably practicable, be set in accordance with applicable accounting principles. If it is not reasonably practicable to follow the principles to the letter a fee should, nevertheless, follow those principles as closely as possible. A fee should also be set on the basis of a reasonable estimate of the demand for a dataset over an accounting period. The Regulations envisage standard fees being established so far as reasonably practicable. Whether standard fees are established or not, the Regulations give a person seeking re-use of a dataset a right to request at any time an account of the basis on which a fee has been determined.

7.4 Finally, the Regulations also prevent a public authority from charging a fee for re-use of its datasets which are relevant copyright works where the public authority has another statutory power to charge a fee for that re-use. This is designed to enable those public authorities who were previously able to charge under other statutory powers to continue to be able to charge on that basis.

8. Consultation outcome

8.1 Prior to the making of these Regulations, the Cabinet Office Transparency Team launched an on-line public consultation seeking views on the new datasets code of practice to be issued under section 45 of the Act. The code and consultation sought to make the public aware of the new datasets provisions in the Act, including (amongst other things) the charging of fees in relation to release of datasets which are relevant copyright works for re-use. The consultation received over forty separate responses from a broad representation of open data advocates, local government and the wider public sector. The responses were on the whole positive, most of the issues raised were around providing additional clarity on key points such as exceptional data charging circumstances and defining ‘reasonably practicable’ timescales.

9. Guidance

9.1 General guidance on the datasets provisions in the Act, including the charging for datasets, is provided in the Code of Practice (datasets), which is a statutory code of practice made under section 45 of the Act and available on the Ministry of Justice website (www.justice.gov.uk). In addition, the Information Commissioner will be publishing his own supplementary guidance on the datasets provisions.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument because it has no impact on business, charities or voluntary bodies. The Regulations maintain the status quo on charging, enabling public authorities (where they wish to do so) to continue to charge on the same basis as before.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Information Commissioner is the independent authority set up to ensure public authorities comply with their statutory obligations under the 2000 Act. He will be able to carry out that function in respect of these provisions as he would in respect of any other obligation imposed by the 2000 Act.

13. Contact

The Cabinet Office Transparency Team will respond to any queries relating to the instrument. Tel 020 7271 2815

Email: transparencystategy@cabinet-office.gsi.gov.uk