

Opinion of the UK Government on

Public Sector Information: A Key Resource For Europe. Green Paper on Public Sector Information in the Information Society

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Introduction

1. The United Kingdom Government welcomes the Green Paper and endorses its central premise that public sector information is a huge and valuable resource that is currently under-utilised. It is important for business and individuals, whether as employees, residents or consumers, to have access to publicly produced or held information so that informed choices can be made, and the free movement of goods, services and people throughout the EU can be enhanced for the internal single market to function more effectively.
2. The Green Paper is wide-ranging. Its main thrusts appear to be on rights of access to, ease of access to, and rights of use (especially commercial exploitation) of information. Consequently it encompasses a number of policy issues such as the information society, electronic government, government copyright, freedom of information, personal privacy, public procurement policy, and competitiveness.
3. The UK Government supports the general concepts behind the paper, but has doubts as to the practicalities of any binding measures to try and achieve some kind of uniformity in this field. The UK Government has a number of programmes under way within the scope of the Green Paper. In March it published White Papers on Crown Copyright and Modernising Government. Modernising Government set out the Government's agenda for the use of IT — particularly the Internet — in providing public information and services. The White Paper on Crown Copyright contained a commitment on behalf of Government to establish a Government Information Asset Register. In May the Government published draft legislation for a Freedom of Information Act. The UK Government published last year a policy and guidance note on selling government services into wider markets.

General observations

4. Much of the Green Paper's discussion revolves around a core policy decision regarding the transparency of public sector processes and accessibility of information held by public sector bodies. This might simplistically be reduced to a policy question about the boundaries between information that is actively made available, that which is available on request or for sale, and that which is not available. A national policy (typically described in terms of freedom of information) is often a constitutional issue within a country and will take into account the consensus on transparency of government, personal privacy (including data protection), commercial confidentiality, state copyright interests, and state confidentiality interests. The Green Paper draws attention to these considerations.
5. The UK, as noted, currently operates the non-statutory Code of Practice on Access to Government Information. However in May of this year the Government published draft legislation for a Freedom of Information Act. This will give the public rights of access to information held by a wide range of public authorities, subject to certain specified conditions and exemptions. The proposed legislation will also ensure that public bodies have a scheme under which they will publish information as a matter of course.

6. In drawing up its legislation the UK has observed other countries' systems. It is apparent that the right of access is markedly different from country to country. Any such legislation must strike a careful three-way balance between:

- a. the public's right of access to information;
- b. the citizen's right to privacy; and
- c. the need for confidentiality where disclosure would be against the public interest

7. Every country has its own way of addressing this conundrum. It therefore does not seem practicable to compress these varied and tailored schemes into one, so any follow-up to this Green Paper may be advised to avoid attempting this for the totality of information (whereas the Directive and Convention on access to environmental information illustrate agreement in a specific case). The risk is that we arrive at the lowest common denominator, harming openness generally. The UK Government is particularly keen to avoid this, as it has worked hard to change the culture of the public sector and increase openness. It believes that its draft legislation contains a radical yet balanced set of proposals that will dramatically alter the relationship between the Government and the citizens.

8. It is important, however, that citizens can obtain clear and comprehensible information on how the access regimes of different countries operate, in order that they can make effective use of them. In this way citizens are provided with the tools to empower themselves.

9. Once such an access policy decision is given, there are then three main focuses of attention. The first is on making access easier by citizens and businesses across the EU (for their own consumption rather than resale) to information about the social and business environment created by public sector activity. This information will be about the law, regulations, taxation, benefits and grants, and so on. It may include reference material such as registers and statistics.

10. The second relates to the use of information, and is on supporting the development of commercial activity in the EU, in particular the information industry. This involves issues about the public sector charging for information that will be used in commercial products or services, about copyright, and about competition where the public sector itself is a commercial actor.

11. The third is the contribution which access — especially electronic — to Government material can make in achieving Information Age objectives.

12. The UK Government takes the view that these three focuses are worthy of further Europe-wide debate, and possibly further action in the nature of projects (such as is happening in the area of patents). Also, as the Green Paper states, in the context of the use of information technology, the debate can extend from the availability of static information to communication with the public sector and transactions with it.

13. The UK Government, while welcoming the Green Paper's initial debate on the full range of issues, believes that to make progress, the issues in question must be narrowed significantly as a result of consultation on the Green Paper. It supports further information exchange, and is itself proactive particularly in the area of Electronic Government. It would consider positively any initiatives that increase awareness, education and training.

14. Therefore in the comments that follow, the assumption is that further debate is on the aims as set out above, relating to easier access, Information Age Government, and supporting commercial activity.

The Public Sector

15. The position of public sector agencies that operate on a commercial basis is not clear in respect of the discussion in the Green paper. Much of the discussion does not fit well with them. Footnote 1 of the Green Paper says; “The definition of the public sector is an issue for discussion.... However, state-owned companies operating under market conditions and subject to private and commercial considerations are clearly not meant to be covered by this Green Paper.” This exclusion could be widened to include organisations in the public sector that operate under market conditions and rely upon trading their information to support the continuation of their role or business, as follows; “State owned companies, and other public bodies operating under market conditions and subject to private and commercial considerations are clearly not meant to be covered by this Green Paper”. Alternatively, the circumstances of such organisations requires separate consideration.

16. Overall, it is probably more helpful to tackle the issue from the point of view of the overall aims of the debate, or from considering particular classes of information. Each Member State may then determine which organisations are affected in its circumstances (as the nature and extent of the functions undertaken by the public sector is likely to differ between States).

Information as the subject for further debate

17. Many of the questions raised by the Green Paper cannot be addressed in the generality of all public sector information, and sometimes not even beyond specific cases. A broad classification of the types of information covered in the Green Paper might be as follows (though these are not intended to be uniquely defined, definitive, or comprehensive).

- a. Material which is of a legislative or administrative nature, dealing with the operation of Government (sometimes called “citizenship”, “basic” or “need to know” information e.g. laws, regulations, guidance, directories).
- b. Data (largely personal) collected in support of carrying out statutory functions (e.g. for taxation, assessing benefit payments).
- c. Government-held resources of data, which are surveyed, gathered and maintained to support government policy administration, and also the commercial and economic development of the nation (e.g. mapping data, statistical databases).
- d. Material, often of a value-added nature, which is often in the form of a saleable product (e.g. maps, statistical digests)
- e. Central registers created by statute or other public function (e.g. of companies, patents, land holdings, emissions, state of the environment).
- f. Material for internal use within the public sector (e.g. policy advice).
- g. Information relating to the democratic process (e.g. proceedings of parliament and councils).

18. This information will be managed by the public sector within a legal and procedural framework that will arise from specific statutes, data protection law, freedom of information policies, government copyright, public finance policy and security policy.

19. In the UK the general presumption is that data (largely personal) collected in support of statutory functions will be used solely for the purposes defined in the statute under which it is

collected. Where data is personal, Data Protection law applies. Further, a statute may explicitly prohibit disclosure. In its White Paper on Modernising Government, published in March 1999, the UK Government stated its belief that data protection is an objective of information age government, not an obstacle to it. It will promote specific codes of practice, on a departmental or inter-departmental basis, for Information Age Government. It will provide a proper and lawful basis for data sharing where this is desirable, for example in the interest of improved service or fraud reduction, consistent with its commitment to protect privacy. Access to personal information is governed at a European level by the EC Data Protection Directive, and there is therefore little scope for divergence in this area. Debate should focus on information where there is a public right to and interest in its wide availability, and where there is a legitimate potential for commercial use.

20. Within the UK the White Paper on the Future Management of Crown Copyright is itself addressing many of the issues of the EU Green Paper through the concepts of coherence, transparency, access, simplification and liberalisation. The White Paper also recognises the special category of Tradeable Information. The concept of tradeable information does not sit comfortably within the generality of the discussion in the Green Paper, and might arguably be excluded from the scope of subsequent work. A special set of issues relates to information gathered and maintained at considerable cost and paid for in the main by the customer and not the taxpayer, and these are illustrated in Annex A, which describes this sort of situation in the Ordnance Survey of Great Britain (a national mapping agency).

Access to Public Sector Information

21. The question of rights of access to information has been discussed above. Turning to means of access, the Modernising Government White Paper published in March set out the Government's agenda for Information Age Government. This covers both the provision of information electronically to citizens and businesses, and the electronic delivery of interactive services. In 1998, the Central IT Unit in the Cabinet Office undertook and published extensive market research ("Electronic Government - The View from the Queue") on the attitudes and expectations of citizens and business towards electronic government. This informed the White Paper. The Government has a number of initiatives in progress that are addressing issues covered in the Green Paper.

- a. The Prime Minister announced in 1997 that, by 2002, 25% of dealings with Government should be capable of being done by the public electronically. Progress towards this target will be published on a six monthly basis. Further targets were set in Modernising Government, that where feasible and practical, 50% of dealings would be electronically enabled by 2005 and 100% by 2008.
- b. The Government Information Service website (www.open.gov.uk) provides an access point to over 600 public bodies' websites, containing public sector information. This will be redeveloped and relaunched to provide easier access to public sector information. Through a group led from the Cabinet Office, major government departments are reviewing how better to co-ordinate the content and appearance of their websites.
- c. The Direct Access Government service on the Internet was created to provide information about a wide range of government regulations. It also gives access to electronic versions of many of the forms commonly needed by business.
- d. The Cabinet Office co-ordinates the UK Government's involvement in the EU's Interchange of Data between Administrations (IDA) programme, which

aims to facilitate the electronic exchange of information between administrations.

- e. The UK Government has launched major network and information initiatives in education, libraries and the health service. In its 1999 Budget it announced a programme worth £1.7 billion to provide computers and IT literacy for all.

22. The UK Government considers this an area where there is a large scope for the sharing of best practice between Member States. It consulted with a number of Member States during the preparation of the Modernising Government White Paper.

Meta Data and Directories of Public Sector Information Resources

23. The views of consumers are of primary significance. Consultation leading to the publication by the UK in March 1999 of the White Paper on the Future Management of Crown Copyright, led to the inclusion of a proposal to set up an Information Asset Register to be accessed over the Internet. This relates to a means of helping with access to published information, as opposed to an index of government-held files or similar. Management of such registers at a level above each Member State would seem impractical at present, though linking and searching at European level may be more feasible.

Pricing Policies and Public Sector Commercial Activity

24. The emphasis placed in the Green Paper on developing partnerships between public and private sectors is in line with recent policy initiatives issued by HM Treasury. This Policy and Guidance Note “Selling Government Services into Wider Markets” was published in July 1998. It encourages Government departments and agencies to look at the scope for establishing commercial services using their information assets.

25. Pricing policy needs to recognise that there are different types of information, different types of use, and different types of producer. One assertion running through the Green Paper that “public information is provided at the expense of taxpayers” is not entirely true. In some countries, including the UK, information — in common with some other government products and services — is also charged for at the point of consumption. Under this approach, only required information is produced and only those that require (or see a legitimate market opportunity to exploit) the information pay. This system ensures adequate funding to maintain the currency of information and develop the quality and usefulness of the data, and is an integral part of the State’s balancing of its finances.

26. There is potential concern where public sector information is traded both within and across national boundaries. However, the safeguard is European and national competition and subsidy laws. These prevent unfair competition and if all public bodies comply with these laws the situation of unfair competition within and across boundaries should not arise. Furthermore, in the UK the rules on the management of Crown copyright discourage the granting of exclusive licences except in exceptional circumstances and prevent the operation of embargoes.

Copyright

27. Copyright legislation creates a balance between protection of the rights of the copyright owner and exploitation by potential users. Where protection and exploitation is across different copyright regimes, this balance is not necessarily safeguarded with exploitation being driven by the guidelines and legislation of the most liberal of the regimes. If this is the

case it may make the copyright owner very protective, in turn creating a barrier to exploitation. For example, the Ordnance Survey of Great Britain and the Ordnance Survey of Northern Ireland have found problems in protecting fully their intellectual property rights (IPR) in at least one country with a more liberal regime.

28. The Green Paper at Paragraph 11 does say: “Nothing in this Green Paper, nor in any future action which it might lead to, should be seen as an attempt to prejudice national rules governing the system of property ownership, nor the role of any public body in the member states”. The UK would take it that this includes intellectual property and therefore copyright. It is very important that the ability of certain government agencies to raise revenue from licensing of Crown copyright protected material is not jeopardised by anything emerging from the Green Paper.

29. Some of the Green Paper's options for further action, particularly those relating to raising awareness about existing public sector information sources, mirror the UK's approach as described in the White Paper on the Future Management of Crown Copyright.

Policies of EU Institutions

30. Access and dissemination of information by the EU institutions is gradually improving, particularly through the use of the Internet. The Amsterdam Treaty provisions on openness will allow for a more uniform policy towards access to documents to be adopted by the Council, Commission and European Parliament. The UK would welcome a proposal from the Commission in this area, but does not see the need for additional initiatives concerning access to documents. The UK believes that with the growing amount of information being made available daily on the Europa web site, the introduction of a “push” system which alerts Internet users via e-mail to the placing of new information in areas where they have expressed an interest would be valuable. This system has been successfully adopted by the UK Foreign and Commonwealth Office's web site.

Conclusion

31. To summarise and develop the points emerging from the discussion above:

- a. The debate about the definition of ‘public sector’ should either be set aside or, for particular issues concerning public sector information, the public sector in each Member State should be defined by that Member State so as to take account of the nature, extent and funding of public functions performed in that State.
- b. From the UK point of view, not all public sector information can be treated the same. The surveying, collecting and maintaining of national data resources (such as a topographic map database) is the core activity of a number of public sector bodies. This sort of activity could and should be viewed differently from that of public bodies whose principal function is public administration and whose accrued information is incidental to their function. In the European discussion tradeable, non-administrative, marketable information should either be excluded or treated in a way that does not jeopardise the user-pays method of funding many organisations.
- c. There is an opportunity to investigate and develop models of funding the provision of the different categories of public sector information. The Green Paper view of taxpayer-funded public sector information provided either free

of charge or at nominal cost with some consumer/business differentiation does not fit many UK Government agencies involved with non-administrative information with a market value. A model involving self-financing, comprehensive access by non-exclusive licence or purchase of products, plus a clearly defined policy on statutory use and non-infringement copying for some groups, could be considered.

- d. The Green Paper recognises the growing and increasing importance of Electronic Government. This is clearly the way forward for the supply of much public sector information and should include developing electronic access, especially via the Internet with good information web sites and meaningful meta-data. In recognising the importance of the Information Age however, Government acknowledges that not all citizens have access to information by electronic means. It could be beneficial to establish a European group for the exchange of experience and best practice in this area.

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Annex A: National Mapping Data — Specific Issues

1. Ordnance Survey (OS) is Britain's national mapping agency. It is widely regarded as the world leader in its field, which covers the production, maintenance, and marketing of a wide range of maps, computer data and other geographical information for business, leisure, educational and administrative use. OS is a UK Government Executive Agency operating as a trading fund, a status allowing it more commercial freedom than would otherwise be possible for most public-sector organisations. Its turnover in 1998/99 was approximately £80m.
2. The OS databases are the source for up to date highly detailed digital and paper mapping at a range of scales for a wide range of markets. Most of OS mapping information is driven by customer requirements and the customer meets the cost of production and maintenance. The basis of OS funding, driven by UK Government policy over many years, is that the user pays not the taxpayer.
3. Ordnance Survey as a public sector body with financial targets operating in a commercial market is largely dependent on its ability to exploit its intellectual property to maintain its revenue stream. Exploitation of intellectual property is done by Ordnance Survey, in partnership with private sector firms or by the private sector itself by means of non-exclusive licences. While operating in this commercial market OS complies with competition law and good business practice. Therefore the impact on Ordnance Survey of inclusion of its databases in broad general statements or policies on the availability of public sector information may be great.
4. The Ordnance Survey model contrasts with some other nation's models where mapping is essentially small scale, less current and consequently of much lower economic value. Also within Europe where National Mapping Agencies are responsible for collecting and maintaining national databases there is a range of regimes, from being funded by public funds to being largely funded by the users.

Impact of pricing policies

5. The business of Ordnance Survey in producing and selling maps is entirely dedicated to the collection and dissemination of information. Ordnance Survey is required by Government to seek, as far as possible to cover its costs through charges for services, products and licences. These charges include the full economic cost of collection and maintenance of the information. OS operates as a trading fund and has an agreement with Government (NIMSA) for non-commercial activities.
6. Without reasonable revenue from charges for its services, licences and products Ordnance Survey would be unable to maintain its operations at current levels. The quality and currency of Great Britain mapping information would suffer and customer needs including those of commerce, consumers and the taxpayer would not be met.
7. It is only by maintaining this revenue that the integrity, currency and technological advances in the mapping information can be made. This contrasts with other models where funding, either from the government or the customer, is not sufficient to maintain and develop the national map database resulting in out of date, patchy coverage at restricted scales.
8. Pricing is only one aspect. Access to the information is equally important and is not necessarily dependent on price. Within the UK, access to mapping information is positively encouraged not least as it is key to revenue earning. This is through non-exclusive licences, partnerships, service level agreements and sale of products. The range of information

available includes vector and raster data as well as paper maps at various scales. This allows specific customer needs to be met at different prices. But also and importantly the UK law already makes provision for public interest non-infringement copying and for certain educational purposes. There is a well-defined category of copying for statutory use already established within the UK. The government also accepts and provides some funding towards the cost of public interest activities.

9. It is suggested that this model — self-financing, wide access by non-exclusive licence or purchase of products plus a clearly defined policy on statutory use and non-infringement copying for some groups — is the most sustainable method for providing up to date, technological advanced mapping information that meets the needs of the private sector and the taxpayer. If or where this type of information is made available at very low cost it is a dangerous assumption to make that governments will meet the shortfall in revenue to enable comprehensive up to date information to be provided. The information is more likely to mirror the limited funds available, as in the US model. This would be to the economic disadvantage of European business.