

**LICENSING OF CROWN COPYRIGHT –  
HMSO REGULATORY FRAMEWORK**

**CONSULTATION PAPER**

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## **INTRODUCTION**

1. In September 2000, the Government accepted the recommendations of the Cross Cutting [Review](#) of the Knowledge Economy, published in December 2000. The aim of the Review was to facilitate a vibrant market for Government information, responding to perceptions in Government and the private sector that it was difficult to make the most productive use of Government information. The Review found that there were administrative barriers which inhibited potential users from outside the Government from identifying useful information. It saw that the Government did not have a single coherent policy on how to decide whether, and on what conditions, to allow the reuse of Government information - such decisions by copyright holders are called licensing. Nor was there a single point of contact for assistance or decisions. Administrative challenges therefore discouraged private sector organisations trying to make innovative reuse of Government information and prices were often perceived as high. The Review recommended changes, in the administration of licensing, and in the pricing of licences. It argued that there would be economic benefits if material which had been generated and funded in pursuit of a core Government objective by a Government Department or Agency were to be available for further exploitation, including commercial exploitation, at no more than the marginal cost of supplying it. Trading Funds were to be treated as an exception.<sup>1</sup> In this paper we call Government Departments and Agencies that are not Trading Funds “Departments”. The Review therefore recommended changes in the management of Crown copyright. A full list of the recommendations of the Review, and progress in achieving them, is at [Annex A](#).

2. The Review recommended that a repositioned HMSO should be established as a regulatory body to oversee Crown copyright licensing, promote the policy objectives identified in the Review and work closely with the Advisory Panel. The Review recommended “as soon as possible a consultation paper should be issued on

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<sup>1</sup> Trading Funds are different from other Government Departments and Agencies in the different way in which they receive Parliamentary authority to spend money. Normally, Parliament approves proposals for different categories of public expenditure by voting on Appropriation Bills allocating public money to the different Departments responsible for the proposed expenditure. Authority for a Trading Fund’s expenditure comes instead from the Parliamentary approval of the specific legislation that set it up. The authority allows it to finance the provision of specific goods or services by charging for them. This is a practical and legal constraint on Trading Funds’ capacity to provide services without seeking a full return of costs.

the future role and scope of the regulatory body...”. This document is that consultation paper.

3. Any original work produced by Crown servants in the course of their official duties is protected by Crown copyright<sup>2</sup>. Copyright is the mechanism which allows the owner to control how a work is reproduced, copied or reused. The responsibility for managing Crown copyright and database rights rests with the Controller of HMSO and Queen’s Printer, appointed by Letters Patent. In this paper we call her “the Controller”. As Queen’s Printer for Scotland, the Controller also exercises equivalent responsibilities in relation to works of the Scottish Administration. When we speak in this paper of the Controller’s reports to Ministers, we mean to include reports direct to Scottish Ministers on relevant Crown copyright handling issues.

4. The consultation paper deals with the following recommendations of the Review:

4.1. An Advisory Panel of representatives from the public and private sectors should be appointed, to work closely with the Controller in her regulatory capacity;

4.2. Licences to reuse core information from Government Departments and Agencies, except Trading Funds, should normally be granted at no more than marginal cost;

4.3. Departments should normally grant licences to reuse information not core to their responsibilities, called “value-added information”, for a fee to be determined in accordance with Treasury rules on charging for Government services. (The specific Treasury guidance is [‘Charges for Information: When and How’](#)).

4.4. Trading Funds should improve their dissemination and pricing policies.

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<sup>2</sup> In this paper we use the term “Crown copyright” to include copyright assigned or transferred to the Crown.

## CONSULTATION

### PURPOSE

5. The purpose of this consultation is to determine the role and scope of the repositioned HMSO as a regulatory body. The proposals draw on the [principles](#) developed by the Better Regulation Task Force governing the use and conduct of regulation. An extract is at [Annex B](#).

### METHOD

6. The Review recommended that the Controller of HMSO should offer Trading Funds delegated powers to manage their Crown copyright licensing if they wished. The proposals in the paper were informed by a series of meetings with Trading Funds and with HM Treasury and DTI officials in May – September 2001. Some Trading Funds have now decided that Crown copyright issues are not central to their concerns and have decided to be covered by the Click-Use Licence and licences tailored by HMSO for value-added material. There is a summary at [Annex D](#) of the role Crown copyright plays in the management of each Trading Fund. As part of the public consultation, we have drawn this paper to the attention of some stakeholders in Trading Funds who might have a role in representing specific interest groups. They are listed at [Appendix 1 to Annex D](#). However we know that we cannot have covered all the interest groups involved and in any case we do not want to discourage individual responses.

7. We do not wish to pre-empt any topic of discussion, but we have identified areas of settled policy so that comments can be focused on remaining issues. This is a public consultation, and we will welcome your comments whatever your interest. If you have a special interest or expertise in any of the issues raised in the consultation, it would be helpful if you would tell us as part of your comments. After the consultation, we intend to publish the comments we have received. If you want to

participate but do not want to be identified in this way, please tell us when you give us your comments and we will respect your confidence.

8. We have set out each proposal in turn, with observations on its implications, a discussion of the arguments for and against it, and the issues on which we are consulting you. Proposals are shown in green and consultation in red. [Annex C](#) is a summary of the proposals and consultation points. [Annex E](#) sets out the proposed regime in full. This consultation paper complies with the [consultation criteria](#) shown at [Annex F](#) which are an extract from the [Code of Practice on Written Consultation](#). We seek responses to the consultation by 14 January 2002.

9. In the past, Controllers have delegated much of the management and decision making on individual items of Crown copyright material to the Crown bodies which generated the material. As a result of the Review, most general Crown copyright licensing for Departments has been taken back to be managed directly in HMSO. Building upon work with the private sector and major licensees of Government material, HMSO has also improved the way in which licences are granted by setting up an on-line Click-Use Licence which covers the reuse of core Crown copyright information. For most Government information, the Click-Use Licence is designed to eliminate the administrative difficulties in obtaining licences. The site went live in April 2001 with 760+ licences issued to date. Building on the success of the Click-Use Licence, HMSO is working to create a regime of tailored licences for value-added material that will operate with the same ease and convenience.

## **MANAGEMENT OF CROWN COPYRIGHT**

### **PROPOSALS**

10. We have made proposals on:
- 10.1. The area of activity to be regulated;
  - 10.2. The rules to govern the activity;

- 10.3 The regulatory body responsible for compliance;
- 10.4 Sanctions to be applied if the rules are breached;
- 10.5 Reporting and accountability.

## **THE AREA TO BE REGULATED**

### **Proposal A**

#### **11. HMSO will regulate decisions made by Departments and Trading Funds under powers delegated by the Controller on licensing of the reuse of Crown copyright material.**

### **Observations**

- 12. This excludes from the regulation regime:
  - 12.1 the decisions made by HMSO itself on licensing the reuse of Crown copyright material and
  - 12.2 material which is not Crown copyright.

### **Discussion**

13. Why no regulatory regime for HMSO? There is nothing to gain in setting up a formal regime in which HMSO regulates itself, though of course HMSO's decisions should be consistent with the rules and policy objectives decided by the Review. HMSO's decisions can be raised under the internal complaints procedure. The Review recommended that HMSO should work closely with the Advisory Panel. The Controller of HMSO intends to draw on its advice in relation to HMSO's licensing decisions and, in time, in refining the delegations she makes to Departments and Trading Funds. The Advisory Panel, which can approach Ministers to resolve major disagreements, will offer external guidance drawing on experience in the public and private sectors.

14. Why only Crown copyright material? Some material available through Crown bodies is not publicly owned. The Government is not involved in decisions over

licensing reuse of material protected by private copyright, so HMSO has no regulatory function. However, information which is generated by public sector bodies which are not Crown bodies is not Crown copyright. The Review recommended that information created by non-Crown public bodies should increasingly be brought under the new policy. However, identifying a common regulator would ensure consistent policy. It will take time to achieve this, and might be more easily accepted if all the detailed arrangements, including regulation, were left open for discussion. Meanwhile, the Controller has no formal sanction over licensing decisions for information that is not Crown copyright.

#### **Consultation A**

**15. We would welcome observations on the scope and limits of the regulatory regime. In particular:**

**15.1 Does the proposed role of the Advisory Panel in monitoring HMSO enough for the proposed scope of Crown copyright regulation match the transparency and accountability principles of good regulation?**

**How should this influence the composition of the Advisory Panel?**

**15.2 Are there any proposed alternatives?**

**15.3 When we discuss extending the new regime outside Crown copyright should we aim for HMSO's regulation role to be extended in parallel?**

**15.4. How might non-Crown bodies be brought under the scope of the regime?**

## **RULES**

### **Proposal B**

**16. All Crown copyright material should be eligible for licensing, subject to Freedom of Information considerations.**

### **Observation**

17. This would prevent Crown bodies from blocking other organisations from taking Crown copyright material, adding value, and marketing a new product.

### **Discussion**

18. This meets the Review recommendation of improved dissemination and encourages competition between the products of Crown bodies and the private sector. If there are no exceptions, as allowed in the Competition Act 1998, there could be product ranges where increased competition to provide the commercially attractive parts might threaten Trading Funds' revenues and the product ranges as a whole.

### **Consultation B**

**19. Is this likely to increase dissemination?**

**19.1 Are there any special exceptions to consider?**

**19.2 What are the penalties, if any?**

### **Proposal C**

**20. All those applying for a licence to reuse the same Crown copyright material should be granted licences on the same basis. Applicants should be granted a licence unless there is evidence that they might not comply with the licence terms.**

## **Observations**

21. This aims to improve the dissemination of Crown copyright material by insisting on equality of treatment for all potential users. It forbids different licensing treatment for the same material and restricts the right to discriminate between applicants for licences.

## **Discussion**

22. This matches the principle of accountability allowing the enforcer to be effective but fair. Why the exception? It is designed to be fair to all licensees. If an applicant has a history of evading the terms of a previous Crown copyright licence, or if he or she is unwilling to make the administrative arrangements that are required of all similar licence holders, then it would be unfair to compliant licensees to grant the licence. A licensee who avoided the costs of compliance would gain an unfair competitive advantage.

23. Some Trading Funds will want to choose an agent from the private sector for specialised information functions, for example managing an archive. The rules should allow this if the agent is selected by a transparent process which defines the term of the appointment. Agents should be instructed to treat all applicants for licences in the same way.

24. The proposal for equal treatment of all potential licensees of the same information would be fair to everyone, but it would not allow some benefits which you might feel are more important than fairness. For example, it would prevent discrimination, even open and transparent discrimination, between different types of reuse. That would mean that the current practice of discriminating between different types of commercial reuse would not be allowed. It would also mean that charities and educational institutions would have to pay for their licences on the same basis as firms working for profit. This could restrict access in ways that significantly reduced dissemination. Normally we would expect price structures could be designed to encourage the widest possible potential for reuse. However there might be some areas where it is impossible to design adequate return, equal treatment and maximum

coverage. A price structure which was lower than commercial companies would have been happy to pay could affect the ability of a Trading Fund to meet its financial objectives. Or the price structure might have to be set so high that some non-commercial licensees were priced out of the market.

### **Consultation C**

**25. Are there real conflicts between the proposal for equal treatment and the aim of maximum access? We would welcome comments on the balance of advantage between them.**

**26. If there should be differential treatment, we would welcome proposals on the principles for deciding who would qualify for favourable terms.**

### **Proposal D**

**27. Licences may include restrictions on inappropriate uses.**

### **Observations**

28. Uses including advertising and misleading implications of Government endorsement are not allowed by the Controller. Other inappropriate uses might be where there is failure to guarantee the quality, authority or currency of specific Crown material that the public rely on, or distortion of official forms.

### **Discussion**

29. Why the restrictions? For sensitive material, public opinion requires the Government to respect taste and decency. For critical material, for example safety information, public interest requires us to protect material which the public rely on from being distorted or repeated with false authority after it has become outdated. The proposed rule is a compromise intended to allow maximum dissemination, but taking into account public expectation, and public interest in the Crown's authority for some

especially trusted material. It is drafted to allow us flexibility in managing future challenges without frequently revising the rules.

#### **Consultation D**

**30. Is this the right compromise between the conflicting public interest in dissemination and in the authority of some Government information?**

**31. Should it be more specific, accepting that we would then need to revise the rules frequently to cope with individual problems?**

#### **Proposal E**

**32. All bodies licensing Crown copyright material, whether HMSO, Departments with delegations from the Controller, or Trading Funds, should publish their current prices and pricing policies.**

#### **Observations**

33. As the Review decided:

33.1 Licences for Crown copyright material created by departments should be priced according to the [Treasury guidance](#). Trading Funds which issue licences may charge prices set to recover a full cost contribution to their financial targets agreed with the Treasury, including appropriate investment.

33.2. Core government information created by a Department will be licensed at no charge unless the originator and HMSO agree that it was unusually expensive to generate. In that case there is provision for a charge to be raised;

33.3 The Treasury guidance will apply to value-added material created by Departments;

33.4 Trading Funds whose licensing is managed by HMSO will be treated like Departments;

33.5. Trading Funds which have accepted delegations from the Controller will be allowed to charge for licences to meet the financial targets set by their Ministers and the Treasury.

## **Discussion**

34. It is already settled that the Click-Use Licence will be free of charge, and other licences issued by HMSO for the reuse of value-added material will be priced according to the Treasury guidance.

35. The permission to Trading Funds to charge in accordance with their financial targets matches the good regulation principles of:

35.1. consistency, which requires that new regulations should be consistent with existing regulations and that Departmental regulators should be consistent with each other;

35.2. targeting, which requires where possible a goals-based approach with enforcers and those being regulated given flexibility in deciding how best to achieve clear, unambiguous goals;

35.3. proportionality, which requires that compliance should be affordable by those regulated. For Trading Funds, affordability means that they should be able to meet their financial targets, finance their activities, and meet the reasonable demands for their services. If the rule is too restrictive, it could attack the revenue supporting the services Trading Funds offer, or plan to offer, to their existing customers.

36. The requirement to hold Trading Funds to a published price list and pricing policy is intended to improve the certainty and transparency of pricing, in accordance with the Review recommendation that pricing should improve. Giving up the bargaining power of price flexibility might mean loss of revenue, which could conflict with Trading Funds' financial targets. Such a conflict would fail to match the principle of consistency. Trading Funds should be able to set their prices to a licensee to allow for some of the revenue lost from their own products which will sell less as they compete for a share of the market with the licensee's products. They should not be able to protect their own goods or services from fair competition by deliberately setting the prices of licences so high that potential licensees cannot market competing products or services effectively.

## Consultation E

37. For material managed by HMSO, the policy has already been decided in the Review.

38. For material managed under a delegation of authority:

38.1. Does this meet the requirement to improve pricing?

38.2. Would the proposal protect the interests of the Trading Funds' current stakeholders?

38.3. In particular does it allow Trading Funds to serve their existing customers and maintain any promised improvement plans?

38.4. Is the risk of losing revenue (and therefore of decreasing the quality of service or increasing the risk to future service) for Trading Funds proportionate to the gain in transparency from fixing and publishing prices and pricing policy?

38.5. Would the proposals enable Trading Funds to expand their customer bases?

## **THE REGULATORY BODY**

### **Proposal F**

**39. HMSO will establish a Regulation Division which will be charged with:**

**39.1 Investigating complaints about decisions made by Departments and Trading**

**Funds on the licensing or reuse of Crown copyright information**

**39.2 Advising the Departments and Trading Funds they regulate on Crown copyright issues;**

**39.3 Improving the licensing performance of regulated bodies;**

**39.4 Generally increasing, and becoming the main contact for, all HMSO's communication with Trading Funds;**

**39.5 Secretariat support for the Advisory Panel.**

### **Observations**

40. The Review recommended that a repositioned HMSO should be established as a regulatory body to oversee Crown copyright licensing, promote the policy objectives identified in the Review and support the Advisory Panel. In response to the Review's recommendation, the Controller has decided to establish a new team, called the Regulation Division, of three permanent staff at salary and related costs of £124,000 a year, focused especially on Trading Funds.

41. This team will investigate any complaints that the rules set out above (as amended in the light of this consultation) have been breached. Without receiving a complaint, it will also intervene to put right bad practice in Departments and Trading Funds with delegations from the Controller.

42. The Controller will task the team to develop formal and informal communication with Trading Funds.

43. All of HMSO will support the Advisory Panel but the Regulation Division will be expected to provide administrative and secretarial support.

## **Discussion**

44. The Regulation Division is part of HMSO so it could not reasonably be expected to regulate licensing decisions by HMSO. Though these decisions will cover most Crown copyright material generated by Departments, and so will probably cover most Crown copyright licensing decisions, there is no evidence that customers will be discontented with the outcome. HMSO has a robust [complaints procedure](#). HMSO's licensing decisions will be visible to the Advisory Panel, and in cases of disagreement the Advisory Panel will have independent access to Ministers.

45. In some cases, the Advisory Panel could approach Ministers about complaints investigated by the Regulation Division. A conflict of interest might arise if a member of the Advisory Panel had a personal or commercial interest in a complaint. To avoid this, Advisory Panel members associated with complaints should not discuss them with other members of the Panel or with HMSO.

46. Why should the Regulation Division not actively seek out bad practice by Trading Funds? To match the proportionality principle of good regulation. When we were researching this paper, we tried to use information from records of complaints about licensing decisions to estimate where the main problems, and therefore potential improvements, lay. There were so few complaints on record that we could extract no useful evidence. That suggests that we should not expect very overt public benefits from regulation, so we should try to avoid large costs both to HMSO and the bodies being regulated.

47. Why should HMSO increase the level of communication with Trading Funds? For three main reasons: first, increased communication will allow the Regulation Division to promote the development of action plans by Trading Funds to improve dissemination and pricing of the material they generate. This was discussed in the Review. Second, it will also be a way to improve both the licensing decisions of Trading Funds, and HMSO's ability to regulate, by increasing HMSO's knowledge of the internal business functions of Trading Funds. Thirdly, we will use evidence from individual Trading Funds and our contacts with Trading Funds generally to develop existing fair trading proposals to improve pricing and dissemination.

48. What are the key skills of the Regulation Division? We currently plan to focus on communication and presentational skills together with standard Civil Service competencies in team working, focusing on results and management. We have not recruited members with professional skills in pricing or cost-benefit analysis, but we recognise that these skills are likely to be necessary for a full investigation of some types of complaint. We intend to bring such skills into the team as necessary for each investigation.

49. Why should the Regulation Division be responsible for HMSO general communication with Trading Funds? To promote quick and efficient regulation. To release resources in HMSO Licensing Division to raise the level of communication with Departments and continue to implement the wider recommendations of the Review.

#### **Consultation F**

**50. Is the Advisory Panel's role and access to Ministers a strong enough regulation of HMSO's licensing functions?**

**51. If not, are there additional arrangements, which could be made and kept in proportion to the risk without altering HMSO's accountability to Ministers and, through Ministers, to Parliament?**

**52. Is the proposal to prevent conflicts of interest in the Advisory Panel strong enough?**

**53. Are the costs of the Regulation Division, and the costs of regulation to the bodies being regulated, in proportion to the potential benefits as required by the good regulation principle of proportionality?**

**54. Is it likely that the professional relationships best suited to opening and maintaining communication channels will conflict (or be seen to conflict) with the need for strict impartiality in regulation?**

## SANCTIONS

### Proposal G

55. For each complaint they find to be justified, the Regulation Division will identify a remedy to put matters right. Remedies may be:

55.1 The offer of a licence which had previously been wrongly refused

or;

55.2. A reduction in the price of a licence or;

55.3 Changes in the conditions attached to a licence.

56. If HMSO and the body complained of do not agree on the appropriate outcome of an investigation, the complaint will be put to Ministers.

57. The Controller may suspend a delegation if she has evidence that the organisation is not equipped to make correct decisions on licensing.

### Observations

58. The Parliamentary Ombudsman can investigate complaints about bad administration in central Government. HMSO, Departments and Trading Funds are all within his jurisdiction. The Ombudsman's protection is separate from the HMSO

59. Remedies (Paragraph 55) are within the powers of the Controller, but she has no power to award compensation for financial loss unless the body complained of offers it.

60. Suspending a delegation might be appropriate if there were several justified complaints about the same type of error, which would suggest that the body complained of did not have the skills or organisation in place to treat requests for licences correctly.

61. There is no formal appeals procedure.

## **Discussion**

62. The principles of good regulation require penalties to be proportionate to the harm done. Why then can compensation only be paid with the agreement of the body complained of? Because there is no other source of funding for compensation, and the Controller of HMSO has no power to compel other organisations to make payments.

63. The Controller sees remedies in licensing not primarily as penalties, but as ways to repair damage from incorrect decisions as fast as possible. She sees the suspension of a licence similarly not as a punishment but as an opportunity to put things right for the future. If she needs to suspend delegation she will offer help to improve, for example by staff training, so that she can restore the delegation, or make arrangements to manage the Crown copyright responsibilities more effectively by HMSO. This matches the good regulation principle of transparency which requires that those being regulated should be made aware of their obligations and given support and time to comply by the enforcing authorities.

64. The principle of accountability requires a well-publicised, accessible, fair and efficient appeals procedure. Either the Advisory Panel or the body complained of will be able to refer decisions to Ministers. This informal appeals process matches the good regulation principle of proportionality, but it is not directly accessible to those raising the complaints.

### **Consultation G**

**65. These are the only sanctions within HMSO's powers (but see the discussion at paragraph 72 below on reporting complaints).**

**66. Is there a need for a more formal appeals procedure? If so, how could its costs and administrative load be kept in proportion to the risk?**

## **REPORTING AND ACCOUNTABILITY**

### **Proposal H**

**67. HMSO will report annually on the cause, handling and outcome of all complaints about Crown copyright licensing to:**

**67.1. The Minister for the Cabinet Office,**

**67.2. The Secretary of State for Trade and Industry and The Chief Secretary to the Treasury,**

**67.3. Ministers of the Scottish Parliament where appropriate;**

**67.4. The Advisory Panel.**

**68. Reports will be published on the HMSO website.**

**69. HMSO will regularly review the regulation regime to test whether it is still necessary and effective. The results will be reported to:**

**69.1. The Advisory Panel and**

**69.2 The Minister for the Cabinet Office**

### **Observations**

70. The Controller of HMSO is accountable to the Minister for the Cabinet Office for the efficient and effective management of HMSO, including regulation, in the normal way. The Secretary of State for Trade and Industry is the Cabinet Minister responsible for electronic commerce, and she and the then Chief Secretary to the Treasury led the Review.

71. Periodic reporting meets the good regulation principle of accountability. Reviewing the regime matches the good regulation principle of targeting. Reviewing, with an eye to elimination, also matches the good regulation principle of proportionality.

## **Discussion**

72. The periodic reports on complaints will offer an opportunity for HMSO to draw attention to good practices that Trading Funds have derived. It will also allow us to highlight any organisations that have not handled their licensing responsibilities well. This embarrassment could serve as an additional sanction, though it could also create resentment and make it more difficult for HMSO to facilitate improvement. Unless it was handled carefully, it could deter non-Crown public sector groups from adopting the new regime, which might impede one of the wider recommendations of the Review.

### **Consultation H**

**73. Do the proposed reporting and accountability arrangements cover all the stakeholders' interests?**

**74. If not, what could be done to improve accountability without increasing costs and administrative load?**

## **CONCLUSION**

75. So far in the paper we have asked for comments on each element of the regulation regime we have proposed. We would also welcome observations on how the proposed regime set out at [Annex E](#) would operate as a whole. Is it likely to deliver improvements in dissemination and pricing of Government information? What problems, or unwanted side effects, if any, is it likely to cause? Does it match as a whole the principles of good regulation set out at [Annex B](#)?

76. Whether or not you decide to comment during the consultation process, we are very grateful to all of you who have contributed to the decision on the future regulation of Crown copyright by reading this paper.

## ANNEX A

### HMSO PROGRESS WITH THE CROSS CUTTING REVIEW

<b>Recommendation from the Cross Cutting Review</b>	<b>HMSO progress and activity to date</b>
<p>1. Government trading funds</p> <p>a. Government trading funds which trade information should improve their pricing and dissemination policies. (Paragraphs 1.16 and 5.20)</p> <p>b. A policy of encouraging price differentiation through product differentiation is appropriate. This would see fixed costs recovered equally between users of the same services but on a variable basis between services according to the type of service. (Paragraph 5.19).</p>	<p>Discussed with Trading Funds during the consultation exercise and preliminary meetings held in May-September 2001, which have been included in the consultation paper.</p> <p>HMSO contributed towards Treasury guidance on charging for Government information '<a href="#">Charges for Information: When and How</a>', issued in July 2001.</p>
<p>2. Elsewhere</p> <p>a. In departments and agencies (other than trading funds) there should be a move to an immediate policy of marginal cost pricing (unless, in any specific case, a statutory enactment indicates otherwise). This should apply to the licensing of raw data but not where the government adds value to material. (Paragraph 1.16 and 5.20 and 5.22)</p> <p>b. Marginal costs be defined as costs, including costs of staff time, reasonably incurred in locating and retrieving the information, and giving effect to the requesters preferred medium for the reply (which could be different to that in which the department currently held it); and also the disbursements directly incurred in communicating the information, eg printing, postage etc. (Paragraph 5.21)</p>	<p>Effective from 1 April 2001, as set out in Treasury guidance on charging for Government information '<a href="#">Charges for Information: When and How</a>'.</p>
<p>3. All government bodies, including those for whom the general rule of marginal cost pricing applied in relation to raw data should still be free to develop value-added services charged at market prices. This should preferably occur through partnership with the private sector under the Treasury's initiative <i>Selling Government Services into Wider Markets</i> and provided that this can be achieved in a transparent manner and in a way which creates a level playing field among all market participants. (Paragraph 1.17 and 5.23)</p>	<p>HMSO contributed towards Treasury guidance on charging for Government information '<a href="#">Charges for Information: When and How</a>'.</p> <p>Criteria for core and value-added material have been developed since Click-Use went live in April 2001.</p>

<p align="center"><b>Recommendation from the Cross Cutting Review</b></p>	<p align="center"><b>HMSO progress and activity to date</b></p>
<p>4. The draft class licence should be finalised in the light of the other recommendations of the review, agreed by the Crown copyright user group and implemented as soon as possible. (Paragraph 1.19 and 6.8)</p>	<p><a href="#">Click-Use Licence</a> introduced on 1 April 2001. This provides on-line users with a fast-track, streamlined process for the reuse of core Government information. Over 760 licences issued by the end of September.</p>
<p>5. Annual fees</p> <p>a. Consideration should be given to levying annual fees where a data set or information source has been particularly expensive to collect, or where government has gone beyond its own needs - so that the commercial re-use of this data is subject to a fixed annual fee set at a level designed to make a contribution to overhead costs but preclude the necessity of negotiations. (Paragraph 1.20 and 6.11)</p> <p>b. If this approach is adopted we think fees should be set on a data-set specific basis and in the range of around £1,000 to £10,000 and that they should only be levied with the prior agreement of HMSO. (Paragraph 6.12)</p>	<p>Pricing issues have been addressed in the Treasury guidance on charging for Government information '<a href="#">Charges for Information: When and How</a>'.</p>
<p>6. HMSO should operate as a central point of contact for businesses which wish to repackage government content and services. HMSO would help navigate the private sector around government, and ensure that for their part departments are cooperative. (Paragraph 1.23 and 7.3)</p>	<p>Building on existing customer base, HMSO has held seminars and presentations with numerous departments and representative bodies.</p> <p>HMSO has compiled a <a href="#">list of Crown bodies</a> which enables users to see the scope of material covered by HMSO's licensing activities.</p> <p><a href="#">List of FAQs</a> on HMSO website has been expanded.</p> <p>Issued various guidance notes which assist users in copyright and publishing issues. This guidance ranges from that which deals with the reuse of particular categories of material to advice on good practice.</p> <p>Created <a href="#">inforoute</a>, which allows users to search the Government's Information Asset Register.</p>
<p>7. HMSO</p> <p>a. A repositioned HMSO should be established as the regulatory body for government content. (Paragraph 1.25 and 7.5)</p>	<p>Regulation Division created as part of HMSO's internal restructure to meet expanded responsibilities.</p>

<p align="center"><b>Recommendation from the Cross Cutting Review</b></p>	<p align="center"><b>HMSO progress and activity to date</b></p>
<p>b. It would have the following functions:</p> <ul style="list-style-type: none"> <li>- act as a guide around departments and processes for private sector companies;</li> <li>- promoting dialogue with the private sector; ensuring a level playing field; help to ensure that departments comply with requests to release data, and that the quality of services are the same for private and public sector customers;</li> <li>- in due course to provide a single point of licensing for most Crown copyright. (Paragraphs 1.24 and 7.4)</li> </ul> <p>c. The new body should work closely with an advisory panel of representatives drawn from the public and private sectors. (Paragraph 7.6)</p> <p>d. The new body will need to develop:</p> <ul style="list-style-type: none"> <li>- the ability to require minimum standards of departments, including abiding by a Fair Trading Charter;</li> <li>- a new complaints procedure which provides real and credible remedies where departments fail to adhere to their published service standards. (Paragraphs 1.26 and 7.7)</li> </ul>	<p>Introduced the <a href="#">Click-Use Licence</a>. Trading funds are encouraged to have a link to their licensing application included on HMSO website.</p> <p>(i) Contacts with non-Crown public bodies instigated. (ii) HMSO is in the process of setting up the Advisory Panel, following input from this consultation. The Panel will be drawn from public and private sector backgrounds and experience. It will replace the <a href="#">Crown Copyright User Group</a>.</p> <p>Draft complaints procedure based on approach in this paper circulated to trading funds in July 2001 for comments. Revised draft issued October 2001.</p>
<p>8. As soon as possible a consultation paper should be issued on the future role and scope for the new regulatory body elaborating upon the proposals set out in the report. (Paragraph 1.27 and 7.8)</p>	<p>Draft of consultation paper circulated to trading funds, DTI and Treasury officials in September, prior to issue to public in October.</p>
<p>9. Delegations of authority for the reuse of information, except for trading funds, should be rescinded on a timetable in line with the introduction of the new charging and licensing arrangements. (Paragraph 1.28 and 7.9)</p>	<p>Taken forward with introduction of on-line Click-Use Licence.</p> <p>Standard delegation of authority to be published on HMSO's website to show the respective obligations and standards to be met in discharging the delegation.</p>
<p>10. The new regulatory body should develop proposals for a licensing task force comprising its own and Treasury staff whose remit will be to work closely with individual agencies (starting with the trading funds) to bring charging policies and licences into line with those set out in this report. (Paragraph 1.28 and 7.9)</p>	<p>Continued close liaison with Treasury has informed this paper.</p>
<p>11. Proposals should be developed for the publication of departmental and agency compliance league tables for publication. (Paragraph 1.28 and 7.9)</p>	<p>To be considered in the consultation paper.</p>
<p>12. All government bodies should meet the HMSO timescale for the creation of their information asset</p>	<p>HMSO continues to work with Government bodies to establish and populate their IARs, with monthly tracking of progress and quarterly reports to Government</p>

<p align="center"><b>Recommendation from the Cross Cutting Review</b></p>	<p align="center"><b>HMSO progress and activity to date</b></p>
<p>registers, and should be tasked with speeding-up where necessary to achieve this, so that these can be cross-searched from the HMSO “inforoute” site. (Paragraph 7.9)</p>	<p>Information Age Champions. 39 IARs had been established with 1500+ searchable records as at the end of September 2001. All Government departments are charged with having their IARs in place by the end of 2001. IARs should be a key part of departments’ planning for meeting the demands of FOI.</p>
<p>13. Upon acceptance of this report, public sector copyright owners other than the Crown, such as local authorities and non-departmental public bodies should be asked to review their charging and licensing and access strategies and align them with the more liberal approach being proposed in relation to Crown copyright. (Paragraph 1.29 and 8.3)</p>	<p>Informal liaison and discussion with other <b>public</b> sector bodies instigated as part of regular briefings and meetings.</p>
<p>14. There should be a presumption in favour of public information being made available in digital format and a prohibition on exclusive arrangements between departments and agencies and the private sector for the digitisation of public sector information where this unreasonably restricts access and/or commercial reuse of the material. (Paragraph 1.30 and 8.2)</p>	<p>Activity underway promoting this. Included in every delegation and in guidance for Government departments.</p>
<p>15. Further work should be undertaken by the Treasury and the DTI on the economics of information pricing with a view to developing further the evidence base and to inform future policy decisions. (Paragraph 5.11)</p>	<p>The e-Envoy is conducting a survey of academic literature which will support the economic analysis of the impact of the Internet. Also, the e-Envoy is bringing together departmental economists to share thinking and agree consistent methodology.</p>

**ANNEX B**  
**BETTER REGULATION TASK FORCE PRINCIPLES OF**  
**GOOD REGULATION**

Transparency	<ul style="list-style-type: none"> <li>• The case for a regulation should be clearly made and the purpose clearly communicated.</li> <li>• Proper consultation should take place before creating and implementing a regulation.</li> <li>• Penalties for non-compliance should be clearly spelt out.</li> <li>• Regulations should be simple and clear and come with guidance in plain English.</li> <li>• Those being regulated should be made aware of their obligations and given support and time to comply by the enforcing authorities with examples of methods of compliance.</li> </ul>
Accountability	<ul style="list-style-type: none"> <li>• Regulators and enforcers should be clearly accountable to government and citizens and to parliaments and assemblies.</li> <li>• Those being regulated must understand their responsibilities for their actions.</li> <li>• There should be a well-publicised, accessible, fair and efficient appeals procedure.</li> <li>• Enforcers should be given the powers to be effective but fair.</li> </ul>
Proportionality	<ul style="list-style-type: none"> <li>• Any enforcement action (e.g. inspection, sanctions etc) should be in proportion to the risk, with penalties proportionate to the harm done.</li> <li>• Compliance should be affordable to those regulated – regulators should “think small first”.</li> <li>• Alternatives to state regulation should be fully considered as they might be more effective and cheaper to apply.</li> </ul>
Consistency	<ul style="list-style-type: none"> <li>• New regulations should be consistent with existing regulations.</li> <li>• Departmental regulators should be consistent with each other.</li> <li>• Enforcement agencies should apply regulations consistently across the country.</li> <li>• Regulations should be compatible with international trade rules, EU law and competition policy.</li> <li>• EU Directives, once agreed, should be consistently applied across the Union and transposed without “gold plating”.</li> </ul>

## **BETTER REGULATION TASK FORCE PRINCIPLES OF GOOD REGULATION**

Targeting	<ul style="list-style-type: none"><li>• Regulations should be aimed at the problem and avoid a scattergun approach.</li><li>• Where possible, a goals approach should be used, with enforcers and those being regulated being given flexibility in deciding how to achieve clear, unambiguous targets.</li><li>• Regulations should be reviewed from time to time to test whether they are still necessary and effective. If not, they should be modified or eliminated.</li><li>• Where regulation disproportionately affects small businesses, the state should consider support options for those who are disadvantaged, including direct compensation.</li></ul>
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**ANNEX C**  
**SUMMARY OF PROPOSALS**

TYPE	PROPOSALS	CONSULTATION
<p style="text-align: center;">AREA TO BE REGULATED</p> <p style="text-align: center;">A</p>	<p>HMSO will regulate decisions made by Departments and Trading Funds under powers delegated by the Controller on licensing of the reuse of Crown copyright material</p>	<p>We would welcome observations on the scope and limits of the regulatory regime.</p> <ul style="list-style-type: none"> <li>• Does the proposed role of the Advisory Panel in monitoring HMSO enough for the proposed scope of Crown copyright regulation match the transparency and accountability requirements of good regulation?</li> <li>• How should this influence the composition of the Advisory Panel?</li> <li>• Are there any proposed alternatives?</li> <li>• When we discuss extending the new</li> </ul>

TYPE	PROPOSALS	CONSULTATION
<p style="text-align: center;">AREA TO BE REGULATED</p> <p>A</p>		<p>regime outside Crown copyright should we aim for HMSO's regulation role to be extended in parallel?</p> <ul style="list-style-type: none"> <li>• How might non-Crown bodies be brought under the scope of the regime?</li> </ul>



TYPE	PROPOSALS	CONSULTATION
<p>RULES</p> <p>C</p>	<ul style="list-style-type: none"> <li>• All those applying for a licence to reuse the same Crown copyright material should be granted licences on the same basis.</li> <li>• Applicants should be granted a licence unless there is evidence that they might not comply with the licence terms.</li> </ul>	<ul style="list-style-type: none"> <li>• Are there real conflicts between the proposal for equal treatment and the aim of maximum access? We would welcome comments on the balance of advantage between them.</li> <li>• If there should be differential treatment, we would welcome proposals on the principles for deciding who would qualify for favourable terms.</li> </ul>

TYPE	PROPOSALS	CONSULTATION
<p>RULES</p> <p>D</p>	<p>Licences may include restrictions on inappropriate uses.</p>	<ul style="list-style-type: none"> <li>• Is this the right compromise between the conflicting public interest in dissemination and in the authority of some Government information?</li> <li>• Should it be more specific, accepting that we would then need to revise the rules frequently to cope with individual problems?</li> </ul>

TYPE	PROPOSALS	CONSULTATION
<p>RULES</p> <p>E</p>	<p>All bodies licensing Crown copyright material, whether HMSO, Departments with delegations from the Controller or Trading Funds should publish their current prices and pricing policies.</p>	<p>For material managed by HMSO, the policy has already been decided in the Review.</p> <p>For material managed under a delegation of authority:</p> <ul style="list-style-type: none"> <li>• Does this meet the requirement to improve pricing?</li> <li>• Would the proposal protect the interests of the Trading Funds' current stakeholders?</li> <li>• In particular does it allow Trading Funds to serve their existing customers and maintain any promised improvement plans?</li> <li>• Is the risk of losing revenue (and therefore of decreasing the quality of service or increasing the risk to future service) for Trading Funds proportionate to the gain in transparency from fixing and publishing prices and pricing policy?</li> <li>• Would the proposals enable Trading Funds to expand their customer bases?</li> </ul>

TYPE	PROPOSALS	CONSULTATION
<p>REGULATORY BODY</p> <p>F</p>	<p>HMSO will establish a Regulation Division which will be charged with</p> <ul style="list-style-type: none"> <li>• Investigating complaints about decisions made by Departments and Trading Funds on the licensing of reuse of Crown copyright information;</li> <li>• Advising the Departments and Trading Funds they regulate on Crown copyright issues;</li> <li>• Improving the licensing performance of regulated bodies;</li> <li>• Generally increasing, and becoming the main vehicle for, all HMSO's communication with Trading Funds;</li> </ul>	<p>Is the Advisory Panel's role and access to Ministers a strong enough regulation of HMSO's licensing functions?</p> <ul style="list-style-type: none"> <li>• If not, are there additional arrangements that could be made and kept in proportion to the risk without altering HMSO's accountability to Ministers and, through Ministers, to Parliament?</li> <li>• Is the proposal to prevent conflicts of interest in the Advisory Panel strong enough?</li> <li>• Are the costs of the Regulation Division, and the costs of regulation to the bodies being regulated, in proportion to the potential benefits as required by the good regulation principle of proportionality?</li> </ul>

TYPE	PROPOSALS	CONSULTATION
<p>REGULATORY BODY</p> <p>F</p>	<ul style="list-style-type: none"> <li>• Secretariat support for the Advisory Panel.</li> </ul>	<ul style="list-style-type: none"> <li>• Is it likely that the professional relationships best suited to opening and maintaining communication channels will conflict (or be seen to conflict) with the need for strict impartiality in regulation?</li> </ul>

TYPE	PROPOSALS	CONSULTATION
<p>SANCTIONS</p> <p>G</p>	<p>For each complaint they find to be justified, the Regulation Division will identify a remedy to put matters right. Remedies may be:</p> <ul style="list-style-type: none"> <li>• The offer of a licence which had previously been wrongly refused or;</li> <li>• A reduction in the price of a licence or;</li> <li>• Changes in the conditions attached to a licence.</li> <li>• If HMSO and the body complained of do not agree on the appropriate outcome of an investigation, the complaint will be put to Ministers.</li> <li>• The Controller may suspend a delegation if she has evidence that the organisation is not equipped to make correct decisions on licensing.</li> </ul>	<p>These are the only sanctions within HMSO's powers</p> <ul style="list-style-type: none"> <li>• Is there a need for a more formal appeals procedure?</li> <li>• If so, how could its costs and administrative load be kept in proportion to the risk?</li> </ul>

TYPE	PROPOSALS	CONSULTATION
<p>REPORTING AND ACCOUNTABILITY</p> <p>H</p>	<p>HMSO will report annually on the cause, handling and outcome of all complaints about Crown copyright licensing to:</p> <ul style="list-style-type: none"> <li>• The Minister for the Cabinet Office,</li> <li>• The Secretary of State for Trade and Industry and The Chief Secretary to the Treasury,</li> <li>• Ministers of the Scottish Parliament where appropriate;</li> <li>• The Advisory Panel.</li> <li>• Reports will be published on HMSO website.</li> </ul> <p>HMSO will regularly review the regulation regime to assess whether it remains necessary and effective. The results will be reported to The Advisory Panel and the Minister for the Cabinet Office.</p>	<ul style="list-style-type: none"> <li>• Do the proposed reporting and accountability arrangements cover all the stakeholders' interests?</li> <li>• If not, what could be done to improve accountability without increasing costs and administrative load?</li> </ul>

## **ANNEX D**

### **A NOTE ON TRADING FUNDS**

Trading Funds are Crown bodies established under the Trading Funds Act 1973. Their activities are funded not through money voted to them directly by Parliament, but from charges to the public and private sector customers for their services.

There are four types of Trading Fund, typically using Crown copyright for different purposes and with different sets of stakeholders interested in how they handle information.

A table of Trading Funds is attached showing their primary use of Crown copyright and their key information stakeholders.

### **INFORMATION TRADERS**

Three Trading Funds, The Met Office, Ordnance Survey and UK Hydrographic Office, trade predominantly in information and depend on income from the trade to maintain their organisations, to maintain and improve their data, and to meet the financial targets set for them. Decisions on pricing are therefore typically very important to them and to their stakeholders.

## **The Met Office**

The Met Office pricing structure is based on the flow of information needed to create a forecast. The costs of maintaining the mathematical model, of observation (including high capital costs of observation equipment), and the computing costs for modelling each set of observations, are met by a core public sector user community. This process delivers an ephemeral set of data which is the basis for meteorological products such as forecasts. Product creation is financed from the sale of the products.

The Met Office routinely exchanges information with similar public sector European and world-wide organisations, which greatly extends and improves the quality of data and therefore of the final products. They also have wide academic contacts.

The economic value of most Met Office commercial products degrades sharply with time, which is why they tend to sell rather than license products. Copying or reuse of data will only be commercially viable for a short time after the data is generated. (There could however be strong scientific and policy value in archive data.) Under the existing funding model there is scope for private sector meteorological services to have timely access to the Met Office ephemeral data so that they can use it to create commercial products in competition with The Met Office.

## **Ordnance Survey**

Ordnance Survey's key responsibilities are to survey and maintain geographical data of the whole of Great Britain; its pricing structure is based on the need to raise sufficient trading income to fund the maintenance and development of the organisation and its databases. As an organisation, it maintains the most detailed mapping data of the country to consistent standards, but it has no monopoly in surveying, map or map data production.

Levels of customer demand and price information allow Ordnance Survey to assess how their customers weigh up the benefits of the currency (up-to-dateness) of the data against the cost of each updating. In many less-developed parts of the country, the

Department of Transport, Local Government and the Regions provides funds to Ordnance Survey, as part of a national interest contract carried out on a not-for-profit basis, to ensure data for those areas is revised as frequently as other rural areas. This is seen as vital in maintaining national cover for a wide variety of public administration purposes but also indirectly benefits all users of the data. All other costs have to be covered by the sale and licensing of Ordnance Survey's products and services.

Ordnance Survey markets access to its databases for both end users of the data as it stands, and for the reuse of the data for the creation of new products or services by third parties. Licences can be granted for use and copying at whatever scale and whatever level suits the licensee. This can range from using and copying maps internally for business use to large-scale commercial publishing ventures, and from the use of on-screen data in an office network through to the incorporation of it in a major commercial software application. Ordnance Survey also creates its own products for end users, both in paper and digital form, and will grant licences for these to be used and copied.

Ordnance Survey has large public sector customers, including Crown bodies such as the MoD and other Government Departments, HM Land Registry and Registers of Scotland. To ensure proper cost information, the Crown bodies are charged for reuse and copy data on similar terms to Ordnance Survey's other customers.

Geographic data and products are commercially valuable, and modern software tools have made it much easier and cheaper to make accurate, illicit copies than was the case in a purely paper mapping era. Since Ordnance Survey's prices must cover their data maintenance and improvement costs – which illicit use evades – competition from illicit use is not only unfair to Ordnance Survey and its many legitimate licensees, but it also undermines vital investment in the future geographic database of Great Britain. Crown Copyright is therefore essential for Ordnance Survey to pursue the legitimate commercial reuse of its geographic data and, in doing so, raise sufficient funds to maintain the quality of that data in the future.

## **UK Hydrographic Office**

The UK Hydrographic Office pricing structure, like Ordnance Survey's, is based on the requirement to fund the maintenance and development of the organisation from trade income. Its key responsibilities are the maintenance and improvement of the UK hydrographic database and issue of hydrographic information and products including safety-critical Notices to Mariners. Sources for hydrographic information are: internal development; The Coastguard Agency, MOD and exchanges with foreign hydrographic authorities. Marketing policy and consequences of illicit copying are similar to Ordnance Survey.

UK Hydrographic Office have a defined status in international law of the sea which challenges them to ensure that they can defend the authority and quality of the data for which they retain accountability. Crown copyright is essential for this purpose.

## **STATUTORY REGISTERS**

Four Trading Funds, Companies House, HM Land Registry, The Patent Office and Registers of Scotland are statutory registers. Their purpose is to maintain current registers available for consultation and search. They are required to charge fees, both for registration and for searching the register, which allow them to break even. Normally however this requirement is applied flexibly over several accounting periods rather than one. (The Patent Office is further disciplined by competition over registration fees with the European Patent Office.) They are not allowed to accumulate a surplus from the statutory fees to fund other services, so the additional costs of any secondary activities must be funded from some other source. Normally this would be from commercial fees for the secondary activity, but other funding sources, such as grants from parent Vote-funded Departments, are possible under the regimes.

## **Companies House and The Patent Office**

These Trading Funds register information which is not Crown copyright, or indeed public property. Intellectual property rights in the content of the registers belong to the company registered or the inventor of the patent. (Companies House disseminates statutory information as a result of section 47 of the Copyright, Designs and Patents Act 1988). Companies House has copyright in the compilations of the statutory information. Both registers do generate Crown copyright material in dating, volume and other peripheral information about entries, but do not experience strong external demand for this type of information. Both registers use Crown copyright primarily to insist on the format of official forms, to ensure accuracy in the use of information from publications and giving acknowledgement of the Crown as author.

## **HM Land Registry and Registers of Scotland**

These Trading Funds register Crown copyright information about changes in the status of land. The reliability of individual entries and the protocols for determining how and when they are changed are crucial factors allowing orderly trade in real property. (Both use Ordnance Survey authoritative geographic products to capture and record information, and both welcome Ordnance Survey ambitions for further investment in digitisation). The main interest in derivative information is in the record left in successive iterations of the registers of changing prices for different types and locations of property.

Both registers are keen to disseminate derivative information at minimum cost to applicants. They will tend to make a single charge for information and allow reuse at nil charge if that can be made to fit their financial obligations. As a result, their main use of Crown copyright is to allow them to insist on the format and content of official forms. In addition HM Land Registry intend to charge a copyright licence fee for commercial bulk reproduction of forms to cover administrative costs.

## **EXAMINERS**

Four Trading Funds, Driving Standards Agency, Driving and Vehicle Testing Agency (Northern Ireland), Medicines Control Agency and Vehicle Inspectorate, operate systems where applicants who meet defined criteria gain or retain privileged status. Like the statutory registers they are funded from fees, in this case from fees for entering the examinations to assess compliance. Fees should be set to break even over time.

### **Driving Standards Agency**

The Driving Standards Agency is responsible for promoting road safety by implementing practical and theory driving tests for most vehicles, supervising motorcycle learning and maintaining a list of driving instructors. The theory test is the area where Crown copyright issues arise. The Driving Standards Agency maintain a large bank of possible questions for the theory test. Learner drivers like to practise for the theory test using possible real questions. Because the question bank is very large compared with the theory test the Driving Standards Agency are able to encourage this as promoting road safety. They publish a book themselves with a sample set of questions drawn from the question bank. They also license several motoring organisations and driving schools to do likewise. The Driving Standards Agency are able to charge significantly more than their main competitors, perhaps because many learner drivers prefer what they see as the authoritative version. The profit is declared to the Department of Transport Local Government and the Regions to be used in road safety programmes.

The Driving Standards Agency uses Crown copyright to charge competitors for licences to reuse material. This is not essential for its continued existence. The charge compensates for loss of direct sales income, and allows equal treatment of all competitors in the field. Crown copyright offers the Driving Standards Agency a means of resisting misleading claims by commercial firms to Government authority for their publications. Crown copyright also allows them some control over how the material is used so they can prevent undermining of the discriminatory power of the

theory test. (This may become more important in future as other test formats with a smaller range of possible examination questions are adopted.)

### **Driving and Vehicle Testing Agency (Northern Ireland)**

Within Northern Ireland, the Driver and Vehicle Testing Agency (NI) is responsible for examining vehicles to ensure they are roadworthy, for conducting driving tests and for approving and monitoring driving instructors. It owns the Northern Ireland MOT station network. Its activities are funded through fees from applicants, set on the normal principle to break even taking one year with another. It has the status of a body corporate meaning that it can only do what it is specifically authorised to do.

For its driving test responsibilities, Crown copyright plays the same role as it does for the Driving Standards Agency. The two agencies co-operate closely on the content of test questions and on marketing learner driver material.

For its other activities, the Driver and Vehicle Licensing Agency (NI) has not seen issues relating to Crown copyright at all, and doubts whether under its body corporate status it would be appropriate for it to market self-generated Crown copyright material commercially. It is considering whether to ask HMSO to manage any developing Crown copyright issues.

### **Medicines Control Agency**

The Medicines Control Agency is responsible for deciding whether new candidate prescription drugs are appropriate for marketing. This means judging information on the chemical compositions of the candidate drugs and on the histories of their test regimes. The Medicines Control Agency charges statutory fees for assessment. The information resulting from each drug assessment is a package of data about the drug which is made available by the pharmaceutical company to health professionals with the agreement of the Medicines Control Agency. The pharmaceutical industry argue forcefully that the information in this package is covered by industry intellectual property rights, not Crown copyright.

In addition to the database of assessed drugs and their test history, the Medicines Control Agency have assumed responsibility for a database collected from general practitioners of effects of prescribed drugs in practice. The Medicines Control Agency market access to this database, largely to academics and medical charities. They have recently decided on a new investment in modernising the database software and in encouraging general practitioners to report. Exercising rights to charge for Crown copyright licensing of this material will allow them to meet their commitments to recoup the costs including the investment costs of this initiative.

The Medicines Control Agency works in an area where the quality of data is critical to public safety, and it sees Crown copyright as a means of maintaining public confidence in the authority of its endorsement.

### **Vehicle Inspectorate**

The Vehicle Inspectorate is responsible for approving motor industry companies for conducting MOT tests. That responsibility is funded through the fee for the package of instructions and documentation issued to approved firms. It is also responsible for carrying out roadworthiness spot checks on heavy goods vehicles and passenger coaches, and for initiatives on education on roadworthiness issues in the road haulage industry. Those responsibilities are funded through grants, related to the level of performance, from the Department for Transport, Local Government and the Regions, and from course fees.

The Vehicle Inspectorate does not generate income from Crown copyright, but believes that it is useful in deterring and stopping misleading use of material. The Vehicle Inspectorate are concerned about motor industry companies using close imitations of official material. In some cases this is to mislead the public and gain a competitive advantage over commercial rivals. In others, information originating in Vehicle Inspectorate is not maintained so quality or timeliness are lost.

## **OTHERS**

The other trading funds' primary business is something other than tradeable information. They are:

Central Office of Information  
Defence Aviation Repair Agency  
Defence Science and Technology Laboratory  
Fire Service College  
Forensic Science Service  
Queen Elizabeth II Conference Centre  
Royal Mint  
OGC Buying Solutions

### **Central Office of Information**

The Central Office of Information works with Government Departments on Government publicity in all media. Campaigns are paid for by the commissioning department which is also how COI is funded through fees charged for its services.

The Central Office of Information has competitively let a contract to a specialised commercial company to manage requests for access to its extensive archive.

Crown copyright is a tool for several management tasks. One unique interest in Crown copyright derives from the Agency's responsibilities to compensate performers where material is shown more than the original contracted number of times. By exerting Crown copyright, the Agency creates a record of each additional performance, which allows it to be confident that it is not failing to alert performers to their dues. Crown copyright also allows the Central Office of Information to control within reason the uses of Government material within the boundaries of taste the public expect.

## **Defence Aviation Repair Agency**

They see Crown copyright as a possible though secondary tool to protect intellectual property in patents, drawings and industrial and management processes which might otherwise be unfairly used by their commercial rivals in unfair competition for Government and commercial contracts.

## APPENDIX 1 TO ANNEX D

The range and depth of Trading Funds' responsibilities means that many different organisations and individuals might have an interest in changes to the management of Crown copyright information. With this consultation we want to be sure of reaching as many as possible of those with an interest. Together with our wider information industry contacts, we alerted the following organisations to the consultation. However, we know that we cannot hope to cover comprehensively all those bodies which might represent specific interests and we encourage readers to bring the consultation paper to the attention of any other organisation or person with an interest.

<b><u>Trading Fund</u></b>	<b><u>Information Stakeholders</u></b>	<b><u>Organisations Alerted</u></b>
Central Office of Information	Performers, broadcasters	Equity. PARMA
Companies House	Companies, financial accountants, professional financial advisers	CBI, ACA, AIFA
Defence Aviation Repair Agency	Aviation repair industry	
Defence Science and Technology Laboratory		
Driving Standards Agency	Motoring organisations, driving schools	AA, RAC, Motor Schools Association of Great Britain
Driver and Vehicle Testing Agency - Northern Ireland	Motoring organisations, driving schools, Road haulage, road transport, car buyers	AA, RAC, Freight Transport Association, Road Haulage Association, Confederation of Passenger Transport, Consumers Association
Fire Service College	Fire services	Home Office.
Forensic Science Service	Criminal investigation and prosecution. Criminal law professionals	Home Office, Association of Chief Police Officers, CPS, Law Societies, Bar Associations
HM Land Registry	Conveyancing professionals, mortgage lenders,	Law Society, Society of Conveyancing Professionals, Council of Mortgage Lenders, Royal Institute of Chartered Surveyors, Association for Geographic Information.
Medicines Control Agency	Pharmaceutical industry, medical practitioners, medical research academics	Association of British Pharmaceutical Industry Royal Pharmaceutical Society of Great Britain
Met Office	Emergency services, environmental services,	Local Government Association, Environment Agency, British Air Transport

<b><u>Trading Fund</u></b>	<b><u>Information Stakeholders</u></b>	<b><u>Organisations Alerted</u></b>
	offshore operations, fishing industry, MOD, transport, retail and leisure industries, outdoor sports	Association, Sea Fish Industry Authority, UK Offshore Operators Association, the Chamber of Shipping, Sports Councils
OGC Buying Solutions		
Ordnance Survey	Geographical Information (GI) Industry, Utilities and Telecommunications, Central and local government, tourism and leisure, land and property professionals, commercial partners	National Joint Utilities Group (NJUG), Association of Geographical Information (AGI), Local Government Association/IDeA, IGGI within DTLR, British Tourist Authority, Royal Institution of Chartered Surveyors; Ramblers Association.
Patent Office	Inventors, individual and company, patent law professionals	Institute of Patentees and Inventors, Federation of Small Businesses, CBI
Queen Elizabeth II Conference Centre		
Registers of Scotland	Property transfer professionals, mortgage lenders,	Scottish Law Society, CML
Royal Mint		
UK Hydrographic Office	Shipping industry, fishing industry offshore oil, coastline and marine sports	Sea Fish Industry Authority, UK Offshore Operators Association, the Chamber of Shipping, Sports Councils
Vehicle Inspectorate	Motorists, Road transport industry, road haulage industry, motor manufacturers and traders	AA, RAC, Freight Transport Association, Road Haulage Association, Confederation of Passenger Transport, Consumers Association

## ANNEX E

### PROPOSED REGULATION REGIME

#### AREA

HMSO will regulate decisions made by Departments and Trading Funds under powers delegated by the Controller, on licensing the reuse of Crown copyright material.

#### RULES

All Crown copyright material should be eligible for licensing, subject to Freedom of Information considerations.

All those applying for a licence to reuse the same Crown copyright material should be granted licences on the same basis. Applicants should be granted a licence unless there is evidence that they might not comply with the licence terms.

Licences may include restrictions on inappropriate uses.

All bodies licensing Crown copyright material, whether HMSO, Departments with delegations from the Controller, or Trading Funds, should publish their current prices and pricing policies.

## **REGULATORY BODY**

HMSO will establish a Regulation Division which will be charged with:

- Investigating complaints about decisions made by Departments and Trading Funds on the licensing of reuse of Crown copyright information;
- Advising the Departments and Trading Funds they regulate on Crown copyright issues;
- Improving the licensing performance of regulated bodies;
- Generally increasing, and becoming the main vehicle for, all HMSO's communication with Trading Funds;
- Secretariat support for the Advisory Panel.

## **SANCTIONS**

For each complaint they find to be justified, the Regulation Division will identify a remedy to put matters right. Remedies may be:

- The offer of a licence which had previously been wrongly refused or;
- A reduction in the price of a licence or;
- Changes in the conditions attached to a licence.

If HMSO and the body complained of do not agree on the appropriate outcome of an investigation, the complaint will be put to Ministers.

The Controller may suspend a delegation if she has evidence that the organisation is not equipped to make correct decisions on licensing

## **REPORTING AND ACCOUNTABILITY**

HMSO will report annually on the cause, handling and outcome of all complaints about Crown copyright licensing to:

The Minister for the Cabinet Office;

The Secretary of State for Trade and Industry and The Chief Secretary to the Treasury;

Ministers of the Scottish Parliament where appropriate;

The Advisory Panel.

Reports will be published on the HMSO website.

HMSO will regularly review the regulation regime to test whether it is still necessary and effective. The results will be reported to:

The Advisory Panel; and

The Minister for the Cabinet Office

## **ANNEX F**

### **CRITERIA FOR WRITTEN CONSULTATION**

This consultation paper follows the criteria set out in the [Code of Practice on Written Consultation](#).

The consultation criteria

To be reproduced in consultation documents

The criteria in this code apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (eg under European Community law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure

The criteria should be reproduced in consultation documents, with an explanation of any departure, and confirmation that they have otherwise been followed

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain

4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken
7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated