

Criteria for Exceptions to Marginal Cost Pricing

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Introduction

Most government information is available for re-use at marginal cost, which often in practice means free of charge, especially where the information is published online. There are some cases where a department has added value to the information to create a commercial product. In those cases the policy is to charge for re-use at full cost plus an appropriate rate of return. In such cases, Departments and Agencies are required to justify their charges to the Office of Public Sector Information (OPSI) part of The National Archives, in its role as manager of Crown copyright and as lead in the public sector information (PSI) agenda in the UK. This does not apply to members of the Information Fair Trader Scheme (IFTS), such as trading funds.

This set of criteria has been developed after public consultation, and OPSI will judge applications from departments and agencies to depart from marginal cost charges against these criteria. This is to ensure that the Government does not restrict or present unnecessary barriers to re-use. The criteria are designed to test compliance with the core principles of PSI policy, and particularly:

- Maximisation of access, re-use and innovation
- Openness and accountability
- Competitive neutrality

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Departments and agencies that satisfy the criteria and application process will be given the authority to license the information. This will be subject to compliance with the IFTS and OPSI verification that IFTS principles have been met.

Criteria

1 Context and setting of information

1.1 Is it essential to produce the information as part of government's core duties and therefore vital to the workings of government?

1.2 Does the information explain government policy or set out how the law, in both UK and EU, must be complied with? Information is essential to the relationship between citizen and state ‡

1.3 Is the information integral to and embedded within a commercial‡ product – with legitimate commercial or other interests of government (bearing in mind, however, that it is generally not the core business of government to commercialise its information, data or copyright works)?

1.4 If so, is the information available in a raw‡ form separate to the commercialised product?

2 Funding/costs of production

2.1 Is the information directly funded by the taxpayer, either through it being collected for the purposes of government or produced with the objective of informing the public?

2.2 Is the information produced under a statutory duty or by command of Parliament? If so, are there any provisions for access or re-use charges in legislation?

2.3 Is the information made available at a low cost for dissemination, for example, an online supply in a digital format?

2.4 Would charging for re-use above marginal cost fund the production and availability of the information?

‡ See examples and glossary in [How to apply for exception to marginal cost pricing assessment](#), with glossary

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2.5 Is the Department or Agency currently adding value to the information? If so:

- would this activity be maintained if charges for re-use were not allowed?
- could this activity be carried out by others?

3 Availability from other sources

3.1 Is the Department or Agency the sole producer[‡] of the information or can the information be obtained from other sources? If the Department or Agency is the sole producer, please explain the circumstances of this position.

3.2 Does the information derive special status and authority because it has been issued by government?

4 Market conditions

4.1 Is the information or a commercial product derived from it, available in competition with other similar information products in the market place?

4.2 Has the information been, or will the information be, made available in the market place by a private sector agent or publisher following a competitive tendering exercise? If so, please give details of the arrangements, including how long the contract has left to run?

5 Effects of charging

5.1 What effect in your view would charging for information have on the level of re-use? Please include supporting evidence for your view, such as feedback form stakeholders.

5.2 What would be the licensing mechanism for charging for the re-use of this information, and what would be the administrative impact of this mechanism for the Department or Agency and for the re-user?

5.3 Will charging for re-use run counter to the spirit or intention of other government objectives? [‡]

5.4 What are the resource costs to the Department or Agency of charging for the reuse of the information in terms of licensing activity, legal support and credit control?

6 Business tests

6.1 Is the Department or Agency able to provide a statement of commitment to Information Fair Trader principles signed by its Permanent Secretary or Chief Executive?

6.2 What is the relationship between the development costs and licensing fees? Is the return on investment reasonable and compliant with HM Treasury standards? †

Departments or agencies wishing to apply to OPSI for a delegation to license information charging above marginal costs should refer to the published document, How to apply for exception to marginal cost pricing assessment:

nationalarchives.gov.uk/documents/information-management/exception-to-marginal-cost-pricing-application-guidelines.pdf