THE CENTRE FOR
DIGITAL CONSUMERS
digitalconsumers.org.uk

Public Sector Data Call for Evidence
Department for Science, Innovation and Technology
publicdatacfe@dsit.gov.uk

Call for Evidence Response

The Centre for Digital Consumers' response to *the marginal cost restriction on public sector data re-use*

Submission date: 22/07/2026

Summary

We do not oppose charging above marginal cost. Our concern is that a single charge falls very differently on different re-users, and that the analysis in the call for evidence does not consider this. A licence fee is a cost of sales to a commercial re-user, who prices it into a product. The same fee is prohibitive to a re-user who publishes free.

Neither approach described at section 5.1 addresses this. Both turn on the data asset rather than the purpose of the re-use. We ask Government to take account of the purpose of the re-use as well. We make six recommendations, and set out our reasoning under the question each relates to.

- Government should assess and report the effect of charging on re-users who publish free public-interest output.
- Any framework should differentiate by the purpose of the re-use, not only by the data asset.
- A single body should decide which data assets may be charged for.
- The non-discrimination requirement in regulation 13 should be extended expressly to charges under regulation 15.
- The framework should define a set of datasets that stay free at the point of re-use.
- Government should adopt the first of the two approaches described at section 5.1, which keeps designated assets within the Regulations.

Full response

Question 3: Do you think current rules on charging affect whether public bodies make data available for re-use, or whether they do so in ways that meet the needs of businesses and other users?

The current rules meet the needs of other users, and they do so because of the restriction the call for evidence proposes to lift. The call for evidence accepts that for data provided digitally "marginal costs are generally zero or negligible as the cost incurred is typically the same regardless of the number of organisations seeking to re-use it". In practice the cap means free, and free is what makes non-commercial re-use possible.

The call for evidence records this as a benefit of the current rules: they "increase transparency and lower barriers to entry by making a significant amount of public sector data freely available for re-use as Open Data", and this "supports re-use by broadening the pool of organisations able to work with the data" (section 4.1).

A charge is a barrier to entry. A framework that permits one therefore raises the barrier section 4.1 identifies the current rules as lowering, and narrows the pool it identifies them as broadening.

Section 4.2 describes the benefit of free availability as economic growth, service creation, and increased tax revenues. All three measure commercial return. A re-user who publishes free makes no commercial return on the data. The value of that re-use does not appear in the comparison.

<u>Who the other users are</u>

Government has described the other users of one major register. It says the Companies House register is "a trusted source for journalists and civil society, government, law enforcement and the public", and lists researchers among its users. Transparency International, quoted in the same statement, said the data "has contributed to countless investigations into corruption and financial crime by law enforcement, the private sector and civil society alike".

We note that under regulation 4(2)(b) the transfer of a document from one public sector body to another, for the purpose of either carrying out its public task, is not re-use. Enforcement bodies acting in their own public task would therefore not be charged. The point concerns the others named: journalists, civil society, the private sector, and researchers.

How the benefit reaches consumers

Consumers rarely re-use this data themselves. They receive its benefit through the work of those who do: reporting that identifies a fraudulent operator, research that establishes how a market behaves, and investigation that traces ownership. If charging reduces that work, the loss reaches consumers although no consumer paid a fee.

Recommendation

Before deciding whether to lift the marginal cost restriction, Government should assess and report the effect of charging on re-users who publish free public-interest output.

Question 4: Do you think it is appropriate for public bodies to charge above marginal costs for the re-use of data assets they hold, if the resulting revenues can be used to: Make more data available for re-use? Make better quality/more useful data available for re-use? Improve public sector data foundations and infrastructure? Improve public services?

Yes, subject to two conditions: a defined test of which purposes are not comparable, and a defined set of datasets that stay free at the point of re-use. We set both out at Question 8.

We accept the reasoning at section 4.2. Incentive and technological barriers are real, sustainable funding can address them, and better maintained data serves re-users as well as the bodies that hold it.

Charging a re-user who publishes free raises nothing

A uniform charge would not raise revenue from every re-user. A re-user who publishes free has no revenue line to absorb a licence fee, and stops rather than pays, so the revenue collected is nil. Serving that re-user costs nothing either, as the call for evidence accepts. Charging the group raises nothing, saves nothing, and ends the re-use.

Exempting it does not dilute charging. It concentrates charging where it works, on re-users who can pay and who will continue to pay because the data earns its fee back. The same arithmetic answers the objection that an exempt re-user takes the benefit of improvements funded by others: those improvements are funded by commercial re-users whether or not the exempt group exists.

Recommendation

Charging above marginal cost is appropriate where the conditions at Question 8 are met: a defined test of which purposes are not comparable, and a defined set of datasets that stay free at the point of re-use.

Question 5: We have outlined four principles to guide any reform of how the public sector charges for data: safeguarding trust; embedding a transparent, rules-based framework; enabling flexibility; and ensuring legal clarity. What principles do you think should guide any reform, and why?

We support all four. We would add that reform should differentiate by the purpose of the re-use, not only by the data asset.

An asset-level test cannot make the distinction

Section 5 describes assessing data assets against clear criteria to determine whether charging would deliver public value. That assessment produces one answer for each asset, and that answer applies to every re-user of it. But the same asset is re-used for purposes that are not alike, and the criteria contain nothing that could distinguish between those purposes.

The Regulations already use purpose as the axis

Regulation 13(1) provides that a condition imposed under regulation 12 “must not discriminate between applicants who make a request for re-use for comparable purposes”. We are therefore not asking Government to adopt a new principle, but to carry one already in the Regulations into any charging framework.

Recommendation

Any framework should differentiate by the purpose of the re-use, not only by the data asset, consistent with regulation 13.

Question 6: If public bodies are able to charge for a wider range of data assets under a rules-based framework, should they determine which data assets they can charge for, or should a single body be responsible for these decisions?

A single body should be responsible, for the reason the call for evidence gives at section 4.1. Publishing under a single licence “allows all users, including other public bodies, to re-use data freely without the need to negotiate re-use agreements on a case-by-case basis, and to easily combine and manage different datasets published under the licence".

Not having to negotiate case by case is recorded there as a benefit of the current regime. Leaving each public body to decide what it may charge for, and on what terms, reintroduces exactly that negotiation. It would produce as many definitions of eligible re-use as there are bodies, and as many processes for claiming it.

The purpose test we propose at Question 8 would then have to be argued separately with each body. That cost falls hardest on re-users without legal resource, and where it exceeds the fee, the test has no practical value to them.

Recommendation

A single body should determine which data assets may be charged for, and should apply the eligibility test uniformly across public bodies.

Question 7: What challenges might users face if public bodies can charge for a wider range of data assets, and what measures should Government take to address them and ensure that all public sector data, including data made available under non-Open Data terms and conditions, is affordable and easy to re-use? (For example, measures could relate to licensing terms, interoperability and the ability to combine data, data quality, and service and delivery models.)

The main challenge is affordability. A charge that a commercial re-user prices into a product is prohibitive to a re-user who publishes free, as we set out at Question 4. A second challenge arises from the Regulations themselves: it is not settled that the non-discrimination requirement at regulation 13 applies to charges at all.

Non-discrimination attaches to conditions, not to charges

Regulation 12 is the power to impose conditions on re-use, where appropriate through a licence. Regulation 13 constrains that power. Regulation 15 is a separate power to charge, and it contains no non-discrimination requirement.

Article 10 of Directive 2003/98/EC, as amended, which these Regulations implement, provides that "any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use". Regulation 13 applies only to conditions imposed under regulation 12, and the Regulations do not settle whether a charge is such a condition. If it is, regulation 13 already applies to charges. If it is not, no non-discrimination duty attaches to charging at all. Charges are capped at marginal cost, and for digital data the call for evidence accepts that this is generally zero or negligible, so there is almost nothing to discriminate over. Designating assets into a chargeable category would create a real pricing discretion, and would leave the question unresolved.

On measures, three of our recommendations bear on affordability. A test keyed to the purpose of the re-use, and a defined set of datasets that stay free, both at Question 8, keep charged data within reach of re-users who publish free. A single decision-maker, at Question 6, keeps terms consistent across bodies. Where each body sets its own, combining datasets held by several becomes harder even where each charge is affordable.

Recommendation

Government should extend the non-discrimination requirement in regulation 13 expressly to charges under regulation 15.

Question 8: What criteria and conditions should be met when determining whether it is possible to charge above marginal cost for a data asset?

Two conditions. Both build on the principle already stated at section 5: assets should be assessed against clear criteria to determine whether charging would deliver public value and societal benefit, and where it does not, "data should continue to be provided as Open Data".

A defined test, set in the framework rather than left to interpretation

The framework should state what makes purposes non-comparable, since the Regulations do not. We suggest that re-use is not comparable to commercial re-use where the output is published free to the public and the purpose is public interest, educational, or research use.

A set of datasets that stay free at the point of re-use

Under section 5, data stays free only where an assessment finds that charging a given asset would not deliver public value. Until those assessments are made, a re-user cannot know which data will stay free.

Directive (EU) 2019/1024 permits charging above marginal cost for certain bodies under Article 6(2), and at the same time requires high-value datasets to be "free of charge for the user" under Article 6(6)(a). Annex I lists six thematic categories of such datasets: geospatial, earth observation and environment, meteorological, statistics, companies and company ownership, and mobility.

The United Kingdom has no equivalent. These Regulations implement the earlier Directive, and the transposition date for the 2019 Directive was 17 July 2021, after the transition period ended.

A published list of which bodies are already exempt

The call for evidence identifies bodies already outside the restriction, including HM Land Registry and trading funds. It does not state the position of others. Regulation 16 requires a public sector body to publish its charges and how they are calculated, and where regulation 15(3)(b) applies, to make available the revenue requirement it must meet. It does not require a body to publish that it relies on regulation 15(3)(a), and no source lists the bodies that do.

We tried to establish the position of one major register and could not. Companies House ceased to be a trading fund on 1 April 2020, and it does not appear among the bodies the call for evidence lists. Whether its register falls within the marginal cost restriction is not determinable from any published source we could find.

Recommendation

Government should define the eligibility test in the framework itself rather than leaving it to individual public bodies, should define a set of datasets that stay free at the point of re-use, and should publish which bodies already fall outside the restriction.

Question 9: Is there a particular approach you would recommend to enable public bodies to charge above marginal costs for a wider range of data assets?

Yes. Government should adopt the first of the two approaches described at section 5.1, which exempts designated assets from the marginal cost restriction through the existing provisions of the Regulations. It should not adopt the second, which would exclude them from the Regulations altogether.

What the second approach removes

Under the first approach a designated asset stays within the Regulations. Under the second it leaves them, and every protection they contain goes with it:

- Regulation 15(6) caps the total charge at direct costs, a reasonable apportionment of indirect and overhead costs, and a reasonable return on investment. Under the second approach there is no ceiling.

- Regulation 13 requires that conditions do not discriminate between applicants re-using for comparable purposes. Under the second approach it would not apply.
- Regulation 14 bars exclusive arrangements except where one is necessary for a service in the public interest, and requires any that are permitted to be published and reviewed. Under the second approach none of that would apply.
- Regulation 15(10) prevents a re-user being charged twice for the same costs. Under the second approach it would not apply.
- Regulations 17 to 19 provide the complaints and appeals route, under which the Information Commissioner can decide whether a body was entitled to rely on the exception at all. Under the second approach a re-user would have no way to challenge a charge or a condition.

The first approach delivers the flexibility section 5 seeks. The second delivers the same flexibility and removes the safeguards with it. It would permit higher charges, since regulation 15(6) would not cap them, but we do not think that additional revenue is worth losing every safeguard the Regulations contain.

<u>Recommendation</u>

Government should adopt the first approach described at section 5.1. If it adopts the second, it should expressly reproduce regulations 13, 14, 15(6), 15(10), and the complaints and appeals route at regulations 17 to 19 within the new category.

About this response

References are to the call for evidence published by the Department for Science, Innovation and Technology on 15 July 2026, to the Re-use of Public Sector Information Regulations 2015, to Article 10 of Directive 2003/98/EC, as amended, and to Directive (EU) 2019/1024. The description of the Companies House register, and the remarks quoted from Transparency International, are from Companies House celebrates 10 years of open data.