

## **‘Right to data’ - Legislation on datasets**

### **Background**

- The Government publicly set out its commitment on openness and transparency in the Coalition Agreement. Publication of datasets will enable
  - the public to hold public authorities to account and
  - redirect and shape what public authorities do and it will
  - enable business and not-for-profit organisations to develop new products and services.
- Policy clearance was obtained to making small amendments to the Freedom of Information Act 2000 (FOI Act) to:
  - explicitly promote the release and re-use of datasets by requiring public authorities to include datasets as part of their publication schemes
  - ensure that public authorities are open to requests from the public to make specific datasets part of their publication schemes
  - ensure that datasets which are released, whether as part of a publication scheme or in response to an individual request, can be re-used under a licence and will be in a re-useable format; and
  - make provision to revise and update the Code of Practice under section 45 of the FOI Act to describe in more detail what datasets are and the open, standardised and re-useable formats of datasets to which we are committed and which will reflect the Transparency Board’s Public Data Principles.

### **The Clause**

- The clause amends in particular, section 11 (FOI requests) and section 19 (publication schemes).
- The new clause inserts a substantive duty into the Act requiring public authorities, when releasing datasets to make them available for re-use under a specified licence, even where the authority holds the copyright.
- In addition, public authorities will, where reasonably practicable, publish datasets in a re-useable format.
- This new duty will apply whether in response to an FOI request or publication through a public authority’s publication schemes.
- The amendments also provide for a definition of “datasets” for the purposes of the FOI Act.

### **Timetable for the Bill**

- The clause has been included in The Protection of Freedoms Bill – a Home Office led Bill which also covers issues such as the regulation of biometric data, regulation of surveillance and counter-terrorism powers
- The Bill was introduced in to Parliament and published on 11 February.

### **Next Steps**

- We are continuing to develop further work on the right to data paper as agreed by the Transparency Board.
- We are working with the Ministry of Justice on preparing for Post Legislative Scrutiny of the Freedom of Information Act.

## 92 Release and publication of datasets held by public authorities

- (1) The Freedom of Information Act 2000 is amended as follows.
- (2) In section 11 (means by which communication to be made)-
  - (a) after subsection (1) insert—

“(1A) Where-

    - (a) an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and
    - (b) on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form, the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use.”
  - b) In subsection (4), for “subsection (1)” substitute “subsections (1) and (1A)”.
  - (c) After subsection (4) insert-

“(5) In this Act “dataset” means information comprising a collection of information held in electronic form where all or most of the information in the collection-

    - (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority,
    - (b) is factual information which-
      - (i) is not the product of analysis or interpretation other than calculation, and
      - (ii) is not an official statistic (within the meaning given by section 6 (1) of the Statistics and Registration Service Act 2007), and
    - (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.”
- (3) After section 11 (means by which communication to be made) insert-

**“11A Release of datasets for re-use**

  - (1) This section applies where-
    - (a) a person makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the authority,
    - (b) any of the dataset or part of a dataset so requested is a relevant copyright work,
    - (c) the public authority is the only owner of the relevant copyright work, and
    - (d) the public authority is communicating the relevant copyright work to the applicant in accordance with this Act.
  - (2) When communicating the relevant copyright work to the applicant, the public authority must make the relevant copyright work available for re-use by the applicant in accordance with the terms of the specified licence.
  - (3) In this section-

“copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);

“copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);

“Crown copyright” has the meaning given by Part 1 of the Act of 1988 (see section 163 of that Act);

“Crown database right” means a database right which subsists in a database of which Her Majesty is the maker (within the meaning given by regulation 14 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

“database” has the meaning given by section 3A of the Act of 1988;

“database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/ 3032);

“owner”, in relation to a relevant copyright work, means-

- (a) the copyright owner, or
- (b) the owner of the database right in a database;

“Parliamentary copyright” has the meaning given by Part 1 of the Act of 1988 (see sections 165 to 167 of that Act);

“relevant copyright work” means-

- (a) a copyright work,
- (b) a work in which Parliamentary copyright subsists, or
- (c) a database subject to a database right,

but excludes a work in which Crown copyright subsists or a database in which Crown database right subsists;

“the specified licence” is the licence specified by the Secretary of State in a code of practice issued under section 45, and the Secretary of State may specify different licences for different purposes.”

(4) In section 19 (publication schemes)-

(a) after subsection (2) insert-

“(2A) A publication scheme must, in particular, include a requirement for the public authority concerned-

- (a) to publish-
  - (i) any dataset held by the authority in relation to which a person makes a request for information to the authority, and
  - (ii) any up-dated version held by the authority of such a dataset, unless the authority is satisfied that it is not appropriate for the dataset to be published,
- (b) where reasonably practicable, to publish any dataset the authority publishes by virtue of paragraph (a) in an electronic form which is capable of re-use,
- (c) where any information in a dataset published by virtue of paragraph (a) is a relevant copyright work in relation to which the authority is the only owner, to make the information available for re-use in accordance with the terms of the specified licence.”

(b) after subsection (7) insert-

“(8) In this section-

“copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);

“copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);

“Crown copyright” has the meaning given by Part 1 of the Act of 1988 (see section 163 of that Act);

“Crown database right” means a database right which subsists in a database of which Her Majesty is the maker (within the meaning given by regulation 14 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

“database” has the meaning given by section 3A of the Act of 1988;

“database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

“owner”, in relation to a relevant copyright work, means-

- (a) the copyright owner, or
- (b) the owner of the database right in a database;

“Parliamentary copyright” has the meaning given by Part 1 of the Act of 1988 (see sections 165 to 167 of that Act);

“relevant copyright work” means-

- (a) a copyright work,
- (b) a work in which Parliamentary copyright subsists, or
- (c) a database subject to a database right,

but excludes a work in which Crown copyright subsists or a database in which Crown database right subsists.”

“the specified licence” has the meaning given by section 11A(3).”

- (5) In section 45 (issue of code of practice)-
  - (a) in subsection (2), after paragraph (d) (and before the word “and” at the end of the paragraph), insert-

“(da) the disclosure by public authorities of datasets held by them,”,
  - (b) after subsection (2) insert-

“(2A) Provision of the kind mentioned in subsection (2)(da) may, in particular, include provision relating to-

    - (a) the giving of permission for datasets to be re-used,
    - (b) the disclosure of datasets in an electronic form which is capable of re-use,
    - (c) the making of datasets available for re-use in accordance with the terms of a licence,
    - (d) other matters relating to the making of datasets available for re-use,
    - (e) standards applicable to public authorities in connection with the disclosure of datasets.”, and
  - (c) in subsection (3) for “The code” substitute “Any code under this section”.
- (6) In section 84 (interpretation), after the definition of “the Commissioner”, insert-

““dataset” has the meaning given by section 11(5);”.