

Natural Resources Wales

Board Meeting

9th July 2013

Paper Title	Charging policy for commercial re-use of information
Paper Reference:	NRW B (O) (22.13)
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Purpose of Paper:	To brief the Board on this issue and to present options for consideration by the Board
Recommendation:	The Board is asked to support Option 2 – adoption by Natural Resources Wales of the Year 1 interim policy beyond April 2014

Impact:	Impact on the Environment: Allowing re-use of information increases the ability of others to undertake research and evidence based decisions about the environment in Wales. Charging for commercial re-use may restrict some re-users and hence reduce the potential for environmental benefit. Impact on the Economy: Charging for commercial re-use may hinder the ability of some SMEs to compete and grow in the open market. Impact on Community: The policy in Wales has been one of promoting access to information. Charging for commercial re-use by a wholly Wales organisation may be seen as a shift in policy which some stakeholders may respond negatively to. Impact on Knowledge: Increased re-use of our evidence base enhances the overall knowledge base about the environment and natural resources in Wales.
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Issue

1. As a public body, Natural Resources Wales (NRW) is required to release, publish and allow re-use of its data and information assets and to publish a charging schedule that details any limits and fees that may be incurred.
2. Charging offers the opportunity to cost recover and possibly generate some return on investment. However, the legislation limits the scope, as does the policy context. Too aggressive an approach to generating a return on investment may undermine NRW's policy to be open, transparent and facilitative of other enterprises.
3. Prior to the creation of NRW, the policies for charging for licensing **commercial re-use** of data and information assets differed between the legacy bodies. CCW and FCW did not charge for commercial re-use, whereas EAW recovered some of the costs by charging for licensing commercial re-use of some assets/products. Some of these services are delivered at an England & Wales scale with ongoing contractual arrangements in place.
4. We therefore adopted a 1 year interim policy to maintain current charging policies, with a 12 month managed service from EA Head Office in place to maintain charging rates and value-added reseller contracts. This will end in April 2014 and we need to agree our policy **urgently** beyond this date to allow for transition.
5. The relevant policy and legislative landscape is currently in flux as the criteria for charging under the Public Sector Information Directive is under review. This limits full option analysis at the current time.

Background

6. Charges relating to dealing with **access** to information are clearly defined in relevant UK legislation, EU Directives and the *Welsh Government Code of practice on access to information*. Current legislation and policy relating to charging for **re-use** is less prescriptive and the WG Code of Practice does not include a policy on charging for re-use of public sector information in Wales.
7. The Environment Agency (EA) generates significant cost recovery by charging for licensing commercial re-use of information (projected to be £3m for 2013/14 for England and Wales). The proportion of the cost recovery for Wales based on the EA scheme and demand in Wales is significantly less (£253k).
8. The EA approach benefits from scale based on England & Wales level demand. There would have to be significant efficiencies in the way the service is provided at a Wales only level and/or a significant increase in costs or new services added to maintain the current cost recovery ratio.

9. In order to ensure UK compliance with the PSI Directive, the National Archives maintain the UK Information Fair Trader Scheme and set the criteria for charging for information and exceptions to marginal cost pricing
- Charging for raw data is generally not permitted unless it is essential to fund the production and availability of the information.
 - Where a Department or Agency is adding value to the information, (e.g. through modelling, analysis or the provision of an information product), charges may be applied where it can be shown that the activity could not be maintained if charges were not allowed.
 - Any additional return on investment must comply with HM Treasury standards.

In all cases the total income shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment

10. The scope for charging is currently under review in both legislative and policy arenas and it is likely that there will be a requirement for increased rights for commercial re-use of public sector information. A new (May 2013) independent review of public sector information commissioned by the UK Department of Business, Innovation and Skills (Shakespeare Review), recommends increasing free and open re-use and a review of the role of Trading Funds (17 UK organisations departments established under the Trading Funds Act e.g. Ordnance Survey, Land Registry et al).

Options

11. The background suggests 3 main policy options; (1) no cost recovery, (2) continuation of interim policy on cost recovery from 1 April 2014 delivered in Wales (3) higher cost recovery and/or cost recovery applying to more assets/products
12. **Option 1 - no cost recovery** - we could start work immediately on implementing a new process and licensing requirements. Specific actions:
- Review re-use rights and restrictions for legacy EA assets to reflect a no charging policy
 - Re-negotiate 9 Value Added Reseller contracts that have transferred into NRW with end dates after April 14
 - Re-negotiate licences with third party data suppliers where products are derived from their information assets

Benefits – Licensing is simplified and cheaper
 Improved customer service
 Enhanced reputation

Dis-benefits - No cost recovery

Costs - In year transition work plus 1.0 FTE to manage publishing

13. **Option 2 – continuation of interim cost recovery policy from April 2014 delivered in Wales**–

we could start work immediately by adopting EA current methodology to create a series of in-Wales procedures and recover circa £253k of costs (offset by increased marginal costs over option 1 of circa £40k). Specific actions:

- Define and develop the in-Wales process
- Define the NRW charging scheme
- Seek approval from the National Archives by developing a statement of NRW public task to the National Archives, clarifying our statutory purpose to demonstrate that the services for which we cost recover are additional

Benefits – Continued cost recovery (circa £253K offset by increased marginal costs over Option 1 of circa £40K)

Dis-benefits - Increased costs due to more complex process to license and charge
Delay in customer service whilst payment is processed

Costs - In year transition work plus 2.0 FTE to issue licences and raise charges

14. **Option 3 – Increased cost recovery through increased charges and/or additional services** – it would be difficult to start work on this immediately as there is a risk of redundant work, as the changing legislative and policy requirements may rule out a number of options. Even if this does not prove to be the case, the scope is limited by existing legislation, Wales level demand and the ability/willingness to pay as well as the legislative basis for NRW.

Benefits – Potential for increased cost recovery and/or return on investment

Dis-benefits - Policy and legislative requirements in flux so difficult to scope full potential currently
May require explicit sponsorship to generate a return on investment

Costs - Unknown but up front costs in developing full option appraisal

Recommendations

15. Based on the current context, Option 3 is not recommended as it is not possible to define the full potential at this time and the risks and issues may outweigh the benefits
16. Option 1 is viable but is potentially a one-way direction of travel. One way options are best adopted based on complete information and given the difficulty of presenting a full options appraisal for Option 3, we recommend deferring a decision on Option 1 for the time being.
17. Given the need to enable transition of service from 1 April 2014, **Option 2 is recommended** as it offers a no-regrets policy and maintains some cost recovery (albeit at a lower cost recovery ratio than current due to increased in Wales costs).

Risks

18. The biggest risk revolves around our ability to transition to deliver either Option 1 or 2 wholly in Wales by 1 April 2014.

Financial Implications

19. Costs associated with the 1 year managed service with EAHO to maintain existing reseller contracts will be released (£56k) once NRW procedure is implemented. However, it is estimated that 2 FTE's additional (£80k) will be required to deliver Option 2 from within NRW but it may be possible during implementation to integrate with other work areas and manage down the increased marginal cost of delivery by NRW.
20. There will also be one-off transition costs during 2013/14 but this work area has already been factored into Transition team costs.

Legal and Compliance Issues

21. Specific legislation with references to charges for commercial re-use are confined to
 - Re-use of Public Sector Information Regulations 2005 (PSI) (Rights to re-use raw data and processed information)
 - Protection of Freedoms Act 2012 (PoFA) (that amends the FoI Act) (rights to re-use raw data)
 - Infrastructure for Spatial Information in Europe Regulations 2009 (INSPIRE) (Rights to access and re-use spatial data)
22. The National Archives Information Fair Trader Scheme is the accreditation mechanism in the UK for public sector bodies wishing to charge for re-use under the PSI Directive. NRW would need to be assessed and accredited to implement an information charging scheme.
23. Any charges must comply with HM Treasury guidelines.

Communications

24. An external stakeholder communication plan will be developed. The charging scheme will be published on the NRW web site and pages relating to access to information will be updated.