

Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007

Consultation Paper

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14/12/2006

This consultation will end on 08/03/2007

Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007

**A consultation produced by the Department for Constitutional Affairs.
This information is also available on the DCA website at www.dca.gov.uk**

Contents

Executive summary	3
Introduction	6
The proposals	7
Questionnaire	17
About you	18
How to respond	19
Annex A - Draft Regulations 2007	21
Partial Regulatory Impact Assessment	29
The consultation criteria	47
Consultation co-ordinator contact details	48

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Executive summary

1. On 16 October 2006 the Department for Constitutional Affairs published the independent review¹ of the impact of the Freedom of Information Act, (the Act). Following the conclusions of the review the Government announced it was minded to:
 - i. include reading time, consideration time and consultation time in the calculation of the appropriate limit (£600) above which requests could be refused on cost grounds; and
 - ii. aggregate requests made by a person or persons apparently acting in concert, to each public authority for the purpose of calculating the appropriate limit,
2. The Government has now taken stock of responses to this announcement and proposes to lay new Regulations to give effect to these changes. The draft Regulations can be found at **Annex A** of this consultation paper.
3. The independent review found that a small percentage of requests and requesters were placing disproportionately large resource burdens on public authorities. While the Government believes it is entirely right that a reasonable amount of resource is spent dealing with requests for information, it believes, in light of experience, the existing provisions need to be amended to allow public authorities to provide the right balance between access to information for all and the delivery of other public services.
4. The draft Regulations at **Annex A** will allow public authorities to take into account more comprehensively the work involved in dealing with an FOI request. This consultation asks for views on the draft Regulations.

Summary of proposed changes

5. To set out the changes to the fee Regulations clearly, Government has drafted a new set of Regulations rather than amend the existing ones. All of the

¹ <http://www.foi.gov.uk/reference/foi-independent-review.pdf>

existing provisions have been maintained in the new set of Regulations attached at **Annex A**.

6. A brief summary of the additional elements which the draft Regulations will introduce are:

- An increase in activities that can count towards the appropriate limit by allowing a public authority to:
 - include in an appropriate limit calculation the costs of **examining** requested information, or a document containing it, for the purpose of ascertaining the nature or content of the information. The powers originally conferred by the 2004 Regulations, allowing a public authority to include in its appropriate limit calculation the costs of determining whether information is held or is likely to be held, and then locating, retrieving and extracting it, will remain. The tasks of determining whether information is held, locating and retrieving that information, and ascertaining its nature or content, will often require a public authority to examine documents or information in any case. The draft Regulations identify this activity as a separate one. They also provide that a public authority will only be able to include the costs of examining information on **one occasion** for these purposes².
 - Include in an appropriate limit, calculating the costs of time spent **consulting** with any person or persons except the applicant. This would include consultation with other public authorities. A public authority would only be able to include the costs of consultation time it would reasonably expect to spend in determining the applicability of exemptions in part II of the Act, and/or to determine whether the public interest falls in favour of maintaining a qualified exemption.
 - include in an appropriate limit calculation the costs of time it reasonably expects to spend in **considering** the applicability of exemptions in part II of the Act to the requested information, and/or whether the public interest falls in favour of maintaining a qualified exemption.
 - introduce certain costing mechanisms that **limit** the extent to which a public authority can include the costs of time spent on necessary consultation and consideration.

² This would also apply to subject access requests under the Data Protection Act 1998 for "unstructured personal data" (as defined in Section 9A of that Act).

- extend the existing provisions for aggregation to allow public authorities to aggregate the costs of all requests received from a person, or persons acting in concert or in pursuance of a campaign, within 60 working days in certain circumstances.

The draft Regulations will be subject to the negative resolution procedure in Parliament.

Introduction

1. This paper sets out for consultation the draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007, which it is proposed will revoke the 2004 Regulations of the same name. It invites views on the draft Regulations, and specifically on whether they would achieve the objective of allowing public authorities to better calculate the actual costs that would be incurred in complying with requests for information. The consultation is aimed at members of the public, public authorities, the media, and campaign groups who have an interest in the proposed changes.
2. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria, which are set out on page 26, have been followed.
3. A partial regulatory impact assessment indicates that any requester submitting one of the small percentage of requests that impose disproportionately high burdens on public authorities will be affected by the proposals. A partial Regulatory Impact Assessment (RIA) is attached to the consultation paper. Comments on this Regulatory Impact Assessment are welcome.
4. Copies of the consultation paper are being widely distributed to various private and public bodies including political parties, private companies, non-departmental bodies, non-government organisation, media organisations and campaign groups.
5. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Background

6. The Freedom of Information Act (the Act), which came into effect on 1 January 2005, provides a statutory right of access to information held by public authorities. Since the Government introduced the Act, the public sector has met the significant majority of the costs of complying with requests made under it. This would continue to be the position following any changes made as a result of these proposals.
7. Most of the costs incurred by a public authority in dealing with requests under the Act are the costs of officials' time. However, the Act provides for a limit on the costs that public authorities must bear when answering a request for information - it allows the Secretary of State to make Regulations that relieve public authorities of their obligations to comply with requests if to do so would cost more than an amount specified in the Regulations (called 'the appropriate limit').
8. The costs which public authorities may take into account when deciding whether they are relieved of their obligation to comply with a request, and the charges that they may make in those circumstances if they exercise their discretion to answer a request, must be determined in accordance with the Regulations made by the Secretary of State.
9. The existing Regulations are the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, which came into force in January 2005. Their key provisions are:
 10. the "appropriate limit", above which public authorities may decline to comply with a request for information, is set at £600 for central Government and Parliament, and £450 for the wider public sector;
 - when estimating whether the costs of complying with a request for information would exceed the appropriate limit, public authorities may only include the costs of determining whether the information is held, and then locating, retrieving and extracting it;

- where those costs relate to the time spent by officials or other people carrying out the relevant activities on behalf of the authority, they must be calculated at a standard rate of £25 per hour; and
- when estimating whether the costs of complying with a request for information would exceed the appropriate limit, public authorities may aggregate the costs of two or more requests received from the same person, or persons who appear to be acting in concert or in pursuance of a campaign, provided the requests relate to the same or similar information and are received within a period of 60 working days.

11. The Government stated in February 2005 that the Regulations would be reviewed within 12-18 months of the Act coming into force, so that lessons could be learnt from their practical operation. The Department for Constitutional Affairs (DCA) commissioned an independent economic review of the operation of the Act, which it published in October 2006 (see <http://www.foi.gov.uk/reference/foi-independent-review.pdf>). The terms of reference for the review set out two issues to be examined in detail:

- the cost of delivering FoI across central Government and the wider public sector, alongside an assessment of the key cost drivers of FoI; and
- an examination of options for changes to the current fee regime for FOI.

12. The review found that a small percentage of requests place disproportionate resource burdens on public authorities, particularly in terms of officials' time. Approximately 5% of central Government requests cost more than £1,000 and account for more than 45% of the combined costs of time spent dealing with initial requests. These requests tend to take almost seven times longer than average to complete. By contrast, 61% of requests cost less than £100 to deliver and account for less than 10% of total costs.

13. The review also found that a small number of regular users of the Act account for a substantial proportion of the overall costs of delivering Freedom of Information. They account for 14% of requests by volume and 26% by cost. Requests made by those users tend to cost substantially more than other requests and take up more resources.

14. The review explored options for amending the Regulations. It found that including reading, consideration and consultation time in calculations of the appropriate limit, as well as extending aggregation to non-similar requests, would have the greatest impact on reducing the most resource-intensive

requests, while ensuring that the large majority of requests for information were not affected.

15. Following the conclusions of the review the Government announced that it was minded to change the Regulations to allow public authorities to:

- include reading time, consideration time and consultation time in the calculation of the appropriate limit above which requests could be refused on cost grounds; and
- aggregate requests made by any person or persons apparently acting in concert or pursuance of a campaign to each public authority for the purposes of calculating the appropriate limit.

16. The Government also announced that it was **not** minded to agree the following:

- a flat fee for all requests (although this could not be ruled out permanently as Parliament had included powers in the Act which could be used to allow such fees); and
- a reduction in the appropriate limit to £400.

17. The Government has now taken stock of responses to this announcement, and proposes to introduce new Regulations in 2007. The draft Regulations at **Annex A** allow public authorities to take into account more accurately the work involved in dealing with FOI requests, to allow public authorities to provide the right balance between access to information for all and the delivery of other public services.

Scope of Changes

18. The proposed changes would apply to England, Wales and Northern Ireland, reflecting the scope of the FOI Act. There is a separate Freedom of Information Act in Scotland which covers Scottish public authorities.

The Draft Regulations

19. Draft Regulations are at **Annex A** of this paper. These new Regulations would be made under the powers conferred by sections 9, 12 and 13 of the Act, and sections 9A and 67 of the Data Protection Act 1998. We would particularly welcome your answers to the questions asked.

Draft regulation 6 – Estimating the cost of complying with a request under the Act

20. Draft regulation 6 would only apply to requests made under the Act.

Reading/Examination Time

21. Draft **regulation 6(2)(d)**, when taken with draft **regulation 6(3)**, would allow a public authority to include in its appropriate limit calculation the costs of **examining** (e.g. reading) the requested information, or a document containing it, to ascertain the nature or content of the information. A public authority would be able to include the costs of examining information on **one occasion** only.
22. The powers originally conferred by the 2004 Regulations, allowing a public authority to include in its appropriate limit calculation the costs of determining whether information is held, and then locating, retrieving and extracting it, would remain unchanged.
23. In most cases, a public authority will in any case have to read/examine information to determine whether it is relevant to the request. Such costs could therefore have been included in an appropriate limit calculation under the 2004 Regulations, as they would fall under the headings “determining whether information is held” and/or “locating” information. The purpose and effect of this draft Regulation would be to allow a public authority that had determined that relevant information was held **without** reading/examining it (for example, a request for all information held on a specified file), to include the costs of reading/examining the information on one occasion only, to ascertain the nature or content of the information. It would not allow a public authority to charge more than once for reading/examining information.
24. The costs of reading/examination time would be estimated at £25 per hour, in line with the current Regulations.
25. **Note:** Draft **regulation 5** would have the same effect in relation to subject access requests under the Data Protection Act 1998 for “unstructured personal data” (as defined in Section 9A of that Act).

Q1. Are the draft Regulations prescriptive enough to ensure consistent calculation of the appropriate limit across public authorities or should they contain more detail? For example, taking into account the differing formats and quantity of information requested, should a standard reference (i.e. a ‘ready reckoner’) for how long a page should take to read be included in the Regulations or guidance?

Consultation and consideration in relation to FOI exemptions

26. Draft **regulations 6(2)(e) and (f)** would allow a public authority to include in an appropriate limit calculation the costs of determining whether any exemption from the Act applied and, in the case of a qualified exemption, the costs of deciding on the public interest balance. Draft **regulation 6(4)** would mean that, when assessing these costs, a public authority would be required to divide them into costs associated with consulting third parties and other consideration costs. The treatment of these costs under the draft Regulations is described in more detail below.

Consultation time

27. Draft **regulations 6(2)(e) and (f)**, when taken with draft **regulation 6(4)(a)**, would allow a public authority to include in an appropriate limit calculation the costs of time spent **consulting** with any person or persons except the applicant. This would include consultation with other public authorities, although it is intended that central Government departments would not include any costs of consulting the DCA Clearing House. A public authority would only be able to include such costs where it reasonably expected to consult in order to determine the applicability of exemptions in part II of the Act, including the balance of the public interest in relation to qualified exemptions.

Consideration time

28. Draft **regulations 6(2) (e) and (f)**, when taken with draft **regulation 6 (4) (b)**, would allow a public authority to include in an appropriate limit calculation the costs of time it would reasonably expect to spend on any other activities within that authority in order to determine the applicability of exemptions in part II of the Act (including the balance of the public interest in relation to qualified exemptions). This would include the time spent by officials **considering** those matters.

Calculation of the costs of consultation and consideration time – cost “thresholds” and “ceilings”

29. Draft **regulation 6(5)** and draft **regulation 6(6)** would **restrict** the extent to which a public authority could include in its appropriate limit calculations the costs of consultation and consideration activities. The draft Regulations introduce a cost “threshold”, below which the costs of consultation and consideration activities could not be included in calculations, and a cost

“ceiling”, a maximum amount that could be included for each activity. The threshold and ceiling provisions would apply separately to consultation and consideration activities.

30. The cost threshold and cost ceiling have been included in the draft Regulations to ensure that requests cannot exceed the appropriate limit because of the costs of either consideration or consultation activities alone. This should ensure that a request cannot be rejected purely because it is “sensitive” or “difficult”, and requires a public authority to spend a great deal of time considering it. A combination of factors, including in some cases the volume of material captured by the request, would have to be present to take costs over the appropriate limit.
31. Draft **regulation 6(5)(a)** would provide that a public authority could only include in its appropriate limit calculations the costs associated with consultation and/or consideration activities where they reasonably expected that the costs attached to the relevant activity would exceed “the additional costs threshold”. Draft **regulation 6(6)(a)** sets that amount at **£100** for central Government and Parliament, and **£75** for the wider public sector. Once the threshold was exceeded, a public authority could include in its calculations all of the costs of consultation and/or consideration activities (including the first £100/£75) up to the “ceiling”.
32. So, for example, if a public authority did not reasonably expect that the costs associated with consultation activities would exceed the “additional costs threshold”, it could not include the costs of consultation activities in its appropriate limit calculation. The same threshold would apply to consideration activities.
33. Draft **regulation 6(5) (b)**, taken with draft **regulation 6(6) (b)**, would provide that a public authority could only include in its appropriate limit calculations a **maximum** amount of costs associated with each of consultation and consideration time (the “additional costs ceiling”). That amount would be set at **£400** for central Government and Parliament, and **£300** for the wider public sector.
34. The costs of consideration and consultation time would be estimated at £25 per hour, in line with the 2004 Regulations.
35. So, for example, even if a public authority reasonably expected that the costs associated with consultation activities would exceed the “additional costs

ceiling”, it could not include costs beyond the ceiling in its appropriate limit calculation. The same ceiling would apply to consideration activities.

36. The cumulative effect of draft **regulations 6 (5) and (6)** would therefore be to provide that the costs attached to consultation and consideration activities could only range from **£100 to £400** for each activity for central Government and Parliament, and **£75 to £300** for the wider public sector. This would result in a possible total of £800/£600 if both activities were included and reached the ceiling.

Q2. Does the inclusion of thresholds in the draft regulations provide sufficient flexibility, taking into account the differing complexity of requests received?

Q3. Are the thresholds the right ones to make sure the balance is struck between allowing public authorities to count these activities but not refuse requests on one of these grounds alone?

Regulation 7 – Aggregation of requests under the Act

37. Draft **regulation 7** would apply only to requests made under the Act.
38. It would allow a public authority, when calculating the appropriate limit, to **aggregate** the costs of requests for information received from the same person (or persons who appear to be acting in concert or in pursuance of a campaign) where they were made within a period of 60 working days and where:
- a) (as under the 2004 Regulations) the requests related to the same or similar information (draft **regulation 7(2) (b)(i)**); or
 - b) the requests did not relate to the same or similar information, but it was reasonable in all the circumstances to aggregate the requests (draft **regulation 7(2) (b) (ii)**).
39. Public authorities would have to judge whether it was reasonable to aggregate non-similar requests under draft **regulation 7(2) (b)(ii)** on a case-by-case basis, but factors to be considered might include:
- the costs which the authority would incur only in dealing with the most recent request, i.e. ignoring any costs which would have to be incurred in

any event in dealing with earlier requests (the greater the additional costs imposed by the latest request, the more reasonable it may be to aggregate costs for the purpose of responding to that request);

- the level of disruption to the public authority, or to particular departments or individuals within the authority, that would be caused by answering a series of non-similar requests (it may be more reasonable to aggregate such requests where the same officials would be required to deal with them and the cumulative effect of doing so would be to interfere disproportionately with the delivery of their duties);
- whether the requester is an individual who is not making the request in the course of a business or profession (it may be more reasonable to aggregate requests made by a company or by an individual for commercial or professional purposes);
- the course of dealings between the requester and the public authority in relation to the requester's FOI requests, which could include requests made outside the 60-day period (it may be more reasonable to aggregate requests made by a person who had made a large number of requests to the authority in the past, or whose conduct in relation to previous requests has been uncooperative or disruptive).

- **Q4. Are the regulations as drafted the best way of extending the aggregation provision?**
- **Q5. Do the factors that need to be taken into account when assessing if it is reasonable to aggregate need to be explicitly stated in the regulations or can this be dealt with in the guidance?**
- **Q6. Are these the right factors?**

Regulation 8

40. Draft Regulation 8 is unchanged from Regulation 6 of the existing Regulations. It provides for the maximum fee that an authority can charge for providing information when it is obliged to do so under the Act. This is limited to charges such as for photocopying, etc. The authority cannot include the cost of officials' time within this provision.

Regulation 9 – maximum fee for communicating information under section 13 of the Act

41. This draft Regulation would apply only to requests made under the Act.
42. Section 13 of the Act allows public authorities to make certain charges for answering a request that exceeds the appropriate limit. As under the existing Regulations, a public authority can charge a fee up to the cost it reasonably expects to incur in informing the requester that it holds the information and communicating it. Draft **regulation 9(3)(b)** would provide that the additional cost threshold (referred to in draft **regulation 5(5)(a)**) and the additional costs ceiling (referred to in draft **regulation 5(5)(b)**) would not apply in relation to consultation and consideration activities where a public authority is to charge a fee under section 13 of the Act.
43. This would ensure that the Regulations would not place public authorities under an inappropriate disincentive to provide information in return for a fee where the costs of compliance would exceed the appropriate limit.

Other matters arising – Environmental Information Regulations

44. The Environmental Information Regulations 2004 (EIRs) apply to requests for environmental information held by public authorities. The EIRs allow public authorities to charge “a reasonable amount” for making environmental information available (with certain exceptions). The Defra guidance on EIRs and charging (<http://www.defra.gov.uk/corporate/opengov/eir/guidance/eir-feeguidance.htm>) refers to the FOI fee Regulations. In order to align its guidance to the FOI fee Regulations where possible, it suggests that the same appropriate limits be used for EIR requests, i.e., that all requests below £600 for central Government and below £450 for other public authorities can be provided free of charge. This enables EIR requests to be treated in exactly the same way as FOI requests below the appropriate limits.
45. The EIRs have no provisions for allowing public authorities to decline to comply with a request specifically on cost grounds. However, a public authority may reject a request if it is “manifestly unreasonable”, and if it is in the public interest to do so. Factors that may be taken into account when considering whether a request for information is manifestly unreasonable include (but are not limited to) the cost burdens that compliance with a request would place on a public authority.

Q7. What guidance would best help public authorities and the general public apply both the EIRs and the Act effectively under the new proposals?

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Reading/examination time

Q1. Are the Regulations prescriptive enough to ensure consistent calculation of the appropriate limit across public authorities or should they contain more detail? For example, taking into account the differing formats and quantity of information requested, should a standard reference (i.e. a 'ready reckoner') for how long a page should take to read be included in the Regulations or guidance?

Consultation and consideration Time

Q2. Does the inclusion of thresholds in the Regulations provide sufficient flexibility, taking into account the differing complexity of requests received?

Q3. Are the thresholds the right ones to make sure the balance is struck between allowing public authorities to count these activities but not refuse requests on one of these grounds alone?

Aggregation

Q4. Are the Regulations as drafted the best way of extending the aggregation provision?

Q5. Do the factors that need to be taken into account when assessing if it is reasonable need to be explicitly stated in the Regulations or can this be dealt with in the guidance?

Q6. Are these the right factors?

Other matters arising – Environmental Information Regulations

Q7. What guidance would best help public authorities and the general public apply both the EIRs and the Act under the new proposals?

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 8 March 2007 to:

**Department for Constitutional Affairs
Information Rights Division
6.16 Selborne House
54-60 Victoria Street
London
SW1E 6QW**

Tel: 020 7210 8034

Fax: 020 7201 7777

Email: informationrights@dca.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>

Publication of response

A paper summarising the responses to this consultation will be published. The response paper will be available on-line at <http://www.dca.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000

(FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

ANNEX A

DRAFT REGULATIONS

STATUTORY INSTRUMENTS

2007 No.

FREEDOM OF INFORMATION

DATA PROTECTION

**The Freedom of Information and Data
Protection (Appropriate Limit and Fees)
Regulations 2007**

<i>Made</i> - - - - -	2007
<i>Laid before Parliament</i>	2007
<i>Coming into force</i> - - -	2007

The Secretary of State makes the following Regulations in exercise of the powers conferred upon him by sections 9(3) and (4), 12(3) to (5), and 13(1) and (2) of the Freedom of

Information Act 2000⁽³⁾, and by sections 9A(5) and 67(2) of the Data Protection Act 1998⁽⁴⁾.

In accordance with section 67(3) of the Data Protection Act 1998, the Secretary of State has consulted the Information Commissioner.

Citation and commencement

1.—(1) These Regulations may be cited as the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007 and come into force on [] 2007.

(2) These Regulations apply to any request for information which a public authority receives on or after [] 2007.

Interpretation

2. In these Regulations—

“the 1998 Act” means the Data Protection Act 1998;

“the 2000 Act” means the Freedom of Information Act 2000;

“the appropriate limit” is to be construed in accordance with regulation 3.

The appropriate limit

3.—(1) This regulation prescribes the appropriate limit for the purposes of—

(a) section 9A(3) and (4) of the 1998 Act; and

(b) section 12(1) and (2) of the 2000 Act.

⁽³⁾ 2000 c. 36. Sections 9, 12 and 13 were amended by the Transfer of Functions (Miscellaneous) Order 2001 (S.I. 2001/3500), article 8 and paragraph 8(1) of Schedule 2; and by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), article 9 and paragraph 12(1)(a) of Schedule 2. The powers conferred by those sections were transferred from the Secretary of State to the Lord Chancellor by the Transfer of Functions (Miscellaneous) Order 2001, article 3 and paragraph 12 of Schedule 1; and were transferred from the Lord Chancellor to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003, article 4 and Schedule 1.

⁽⁴⁾ 1998 c. 29. Section 9A of the Data Protection Act 1998 was inserted by section 69(2) of the Freedom of Information Act 2000. Sections 9A and 67 of the Data Protection Act 1998 were amended by the Transfer of Functions (Miscellaneous) Order 2001, article 8 and paragraph 6(1) of Schedule 2; and by the Secretary of State for Constitutional Affairs Order 2003, article 9 and paragraph 9(1)(a) of Schedule 2. The powers conferred by those sections were transferred from the Secretary of State to the Lord Chancellor by the Transfer of Functions (Miscellaneous) Order 2001, article 3 and paragraph 11 of Schedule 1; and were transferred from the Lord Chancellor to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003, article 4 and Schedule 1.

- (2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.
- (3) In the case of any other public authority, the appropriate limit is £450.

Valuation of time

- 4.—(1) This regulation applies to any estimate of costs which a public authority makes under regulation 5, 6 or 9.
- (2) Where the public authority takes account of any costs which are attributable to the time which persons are expected to spend undertaking any of the activities mentioned in regulation 5, 6 or 9 on behalf of the authority, it shall estimate those costs at the rate of £25 per person per hour.

Estimating the cost of complying with a request for unstructured personal data

- 5.—(1) This regulation applies where a public authority proposes to estimate whether the cost of complying with a request for unstructured personal data would exceed the appropriate limit for the purposes of section 9A(3) or (4) of the 1998 Act.
- (2) A public authority may, for the purpose of its estimate, take account only of the costs which it reasonably expects to incur in relation to the request in—
 - (a) determining whether it holds the data;
 - (b) locating the data, or a document which may contain the data;
 - (c) retrieving the data, or a document which may contain the data;
 - (d) examining the data, or a document containing them, for the purpose of ascertaining the nature or content of the data; and
 - (e) extracting the data, or so much of the data as the public authority is required to communicate under section 7(1) of the 1998 Act, from a document containing them.
- (3) The costs which a public authority takes into account for the purposes mentioned in paragraph (2)(a) to (d) may not include the costs of examining any data or document more than once.

Estimating the cost of complying with a request under the 2000 Act

- 6.—(1) This regulation applies where a public authority proposes to estimate whether the cost of complying with a request for information would exceed the appropriate limit for the purposes of section 12(1) or (2) of the 2000 Act.
- (2) Subject to paragraphs (3) to (6), a public authority may, for the purpose of its estimate, take account only of the costs which it reasonably expects to incur in relation to the request in—
 - (a) determining whether it holds the information;
 - (b) locating the information, or a document which may contain the information;
 - (c) retrieving the information, or a document which may contain the information;
 - (d) examining the information, or a document containing it, for the purpose of ascertaining the nature or content of the information;
 - (e) determining whether any provision of Part II of the 2000 Act applies to the information;

- (f) reaching a decision about the application of section 2(1)(b) or (2)(b) of the 2000 Act; and
 - (g) extracting the information, or so much of the information as the public authority is required to communicate under section 1(1)(b) of the 2000 Act, from a document containing it.
- (3) The costs which a public authority takes into account for the purposes mentioned in paragraph (2)(a) to (d) may not include the costs of examining any information or document more than once.
- (4) Where a public authority proposes to take into account any costs which it reasonably expects to incur only for the purposes mentioned in paragraph (2)(e) and (f), it shall estimate separately—
- (a) the costs of consulting any persons, other than the person making the request, for those purposes; and
 - (b) any other costs which it reasonably expects to incur for those purposes.
- (5) The costs mentioned in each of sub-paragraphs (a) and (b) of paragraph (4) may only be taken into account for the purposes of the public authority's estimate—
- (a) where the costs mentioned in that sub-paragraph alone exceed the additional costs threshold; and
 - (b) to the extent that the costs mentioned in that sub-paragraph do not exceed the additional costs ceiling.
- (6) In this regulation—
- (a) “the additional costs threshold” means—
 - (i) in the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, £100;
 - (ii) in the case of any other public authority, £75;
 - (b) “the additional costs ceiling” means—
 - (i) in the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, £400;
 - (ii) in the case of any other public authority, £300.

Aggregation of requests under the 2000 Act

7.—(1) This regulation specifies the circumstances in which, where two or more requests for information are made to a public authority—

- (a) by one person; or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is, under section 12(5) of the 2000 Act, to be taken to be the total costs which the authority may take into account under regulation 6 of complying with all of them.

(2) Those circumstances are—

- (a) that the two or more requests referred to in paragraph (1) are received by the public authority within any period of sixty consecutive working days; and
- (b) that either—

- (i) those requests relate, to any extent, to the same or similar information; or
 - (ii) it is reasonable in all the circumstances for the public authority to take account of the total costs of complying with all of those requests.
- (3) In this regulation, “working day” has the same meaning as in section 10 of the 2000 Act.

Maximum fee for complying with section 1(1) of the 2000 Act

8.—(1) This regulation specifies the maximum fee which a public authority may charge under section 9 of the 2000 Act for complying with section 1(1) of that Act.

- (2) Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs which the public authority reasonably expects to incur in relation to the request in—
- (a) informing the person making the request whether it holds the information; and
 - (b) communicating the information to the person making the request.
- (3) The costs which a public authority may take into account for the purposes of this regulation include, but are not limited to, the costs of—
- (a) complying with any obligation under section 11(1) of the 2000 Act as to the means of communicating the information;
 - (b) reproducing any document containing the information; and
 - (c) postage and other forms of transmitting the information.
- (4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons are expected to spend undertaking any of the activities mentioned in paragraph (2) on behalf of the authority.

Maximum fee for communicating information under section 13 of the 2000 Act

9.—(1) This regulation specifies the maximum fee which a public authority may charge under section 13 of the 2000 Act for the communication of information.

- (2) The maximum fee is a sum equivalent to the total of—
- (a) the costs which the public authority may take into account under regulation 6 in relation to that request; and
 - (b) the costs which it reasonably expects to incur in relation to the request in—
 - (i) informing the person making the request whether it holds the information; and
 - (ii) communicating the information to the person making the request.
- (3) But for the purposes of paragraph(2)(a), a public authority shall disregard—
- (a) any costs which it may take into account under regulation 6 solely by virtue of regulation 7; and
 - (b) the limitations on the costs which it may take into account under regulation 6 by virtue of paragraph (5) of that regulation.
- (4) The costs which a public authority may take into account for the purposes of paragraph (2)(b) include, but are not limited to, the costs of—
- (a) giving effect to any preference expressed by the person making the request as to the means of communicating the information;
 - (b) reproducing any document containing the information; and

(c) postage and other forms of transmitting the information.

Revocation and transitional provision

10.—(1) The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004⁽⁵⁾ are revoked.

(2) But those Regulations shall continue to apply to any request for information received by a public authority before [] 2007 as if they had not been revoked.

[Date]

[Name]
Parliamentary Under Secretary of State
Department for Constitutional Affairs

⁽⁵⁾ S.I. 2004/3244.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to requests for information under the Freedom of Information Act 2000 (“the 2000 Act”) and subject access requests for unstructured personal data under the Data Protection Act 1998 (“the 1998 Act”). They make provision relating to—

“the appropriate limit” referred to in section 12 of the 2000 Act and section 9A of the 1998 Act, and the costs which may be counted towards that limit;

the fees which may be charged for compliance with a request for information under section 9 of the 2000 Act; and

the fees which may be charged under section 13 of the 2000 Act where the estimated costs of complying with a request for information would exceed the appropriate limit.

These Regulations come into force on [] 2007. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the 2004 Regulations”) are revoked, but will continue to apply to requests made before [] 2007.

If a public authority estimates that the cost of complying with a request would exceed the appropriate limit, then the obligation to comply with the request which would otherwise be imposed by section 7 of the 1998 Act or section 1 of the 2000 Act does not apply. Regulation 3 prescribes an appropriate limit of £600 for the public authorities listed in Part I of Schedule 1 to the 2000 Act (including government departments) and of £450 for all other public authorities.

Regulation 5 makes provision for estimating whether the costs of complying with a subject access request for unstructured personal data, as defined in section 9A of the 1998 Act, would exceed the appropriate limit. Regulation 6 makes provision for estimating whether the costs of complying with a request for information under the 2000 Act would exceed the appropriate limit. The costs which may be taken into account are limited to those which the public authority reasonably expects to incur in undertaking certain specified activities in response to the request. Regulation 6 increases the range of activities which may be taken into account in relation to a request under the 2000 Act, to include consideration of the application of exemptions and associated consultation with third parties. Whereas the costs of those two activities were excluded under the 2004 Regulations, the costs of each activity (consideration and consultation) may now be taken into account if they exceed the “additional costs threshold” and up to the “additional costs ceiling” specified in regulation 6. Time which people spend on any of the activities mentioned in regulation 5 or 6 is to be valued at £25 per hour in accordance with regulation 4.

Regulation 7 makes further provision for the estimation of costs in cases under the 2000 Act. It provides that in certain situations where a public authority receives multiple requests from the same person or people who appear to be acting together, the estimated cost of complying with any single request is to be taken to be the aggregate estimated cost of complying with them all. Whereas the 2004 Regulations confined aggregation to similar requests, regulation 7 allows public authorities to aggregate other requests where it is reasonable to do so in all the circumstances.

Regulation 8 makes provision as to the maximum fee that a public authority may specify in a fees notice under section 9 of the 2000 Act as a charge for complying with its duty under section 1(1) of the Act. The maximum is to be calculated by reference to specified limited

costs of informing the requestor whether it holds the information and, if so, of communicating it to the requestor.

Regulation 9 specifies the maximum fee that a public authority may charge for the communication of information under section 13 of the 2000 Act, in a case where it is not required to communicate the information due to the effect of the appropriate limit and is not otherwise required by law to do so. The maximum is to be calculated by reference to the total costs which may be taken into account in estimating whether the cost of complying with the request would exceed the appropriate limit (excluding any costs “aggregated” from other requests, and ignoring the additional costs threshold and ceiling in relation to any costs of considering exemptions and consulting third parties), together with the full costs of informing the person who made the request whether the information is held and communicating the information.

Partial Regulatory Impact Assessment (RIA)

Title of Proposal

- 1 Introduction of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007 (replacing the 2004 Regulations of the same name).

Purpose and intended effect of measure

The objective

- 2 By amending the 2004 Regulations the objective is to:
 - ensure that in meeting their obligations under the Freedom of Information Act public authorities are able to better calculate the actual costs that would be incurred in complying with requests for information, to provide the right balance between access to information for all and the delivery of other public services.
- 3 The Freedom of Information Act, which came into effect in January 2005, provides a statutory right of access to information held by public authorities. Since the Government introduced the Act, the public sector has met the majority of the costs of complying with requests made under it. This would

continue to be the position following any changes made as a result of these proposals.

- 4 Most of the costs incurred by a public authority in dealing with requests under the Act are the costs of officials' time. However, the Act provides for a limit on the costs that public authorities must bear when answering a request for information - it allows the Secretary of State to make Regulations that relieve public authorities of their obligations to comply with requests if to do so would cost more than an amount specified in the Regulations (called 'the appropriate limit').
- 5 The costs which public authorities may take into account when deciding whether they are relieved of their obligation to comply with a request, and the charges that they may make in those circumstances if they exercise their discretion to answer a request, must be determined in accordance with the Regulations made by the Secretary of State.
- 6 The relevant Regulations are the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, which came into force in January 2005. Their key provisions are:
 - the "appropriate limit", above which public authorities are not obliged to comply with a request for information, is set at £600 for central Government and Parliament, and £450 for the wider public sector;
 - when estimating whether the costs of complying with a request for information would exceed the appropriate limit, public authorities may only include the costs of determining whether the information is held, and then locating, retrieving and extracting it;
 - where those costs relate to the time spent by officials or other people carrying out the relevant activities on behalf of the authority, they must be calculated at a standard rate of £25 per hour; and
 - when estimating whether the costs of complying with a request for information would exceed the appropriate limit, public authorities may aggregate the costs of two or more requests received from the same person, or persons who appear to be acting in concert, provided the

requests relate to the same or similar information and are received within a period of 60 working days.

7. The Government stated in February 2005 that the 2004 Regulations would be reviewed within 12-18 months of the Act coming into force, so that lessons could be learnt from their practical operation.

Rationale for government intervention

8. In light of the Government's commitment, the Department for Constitutional Affairs (DCA) commissioned an independent economic review⁶ of the impact of the Act⁷. The review's terms of reference set out two issues to be examined in detail:
 - the cost of delivering Fol across central government and the wider public sector, alongside an assessment of the key cost drivers of Fol; and
 - an examination of options for changes to the current fee regime for Fol.
9. The review was completed in October 2006 (see <http://www.foi.gov.uk/reference/foi-independent-review.pdf>). It found that a key issue in terms of the cost of dealing with information requests was the number of very expensive requests that public authorities are obliged to process under the 2004 Regulations. A small percentage of requests and requesters place disproportionate resource burdens on public authorities, particularly in terms of officials' time. Approximately 5% of central government requests cost more than £1000 and account for more than 45% of the costs of time spent dealing with initial requests. These requests tend to take almost seven times longer than average to complete. By contrast, 61% of requests cost less than £100 to deliver and account for less than 10% of total costs.

⁶ This was conducted by economic consultancy Frontier Economics <http://www.foi.gov.uk/reference/foi-independent-review.pdf>.

⁷ The review looked at the total costs involved, and was not limited to those costs that can be counted towards the fees limit.

10. The costs of the 5% of very high burden requests were found to be to a large extent driven by the costs in officials' time. The time that public authorities spend dealing with those requests constitutes time away from their other public service duties. While the Government believes that it is entirely right that officials should spend a reasonable amount of time dealing with requests for information, it is believed that the 2004 Regulations do not allow public authorities to strike the right balance between complying with their duties under the Act to provide access to information, and delivering their other public service duties.
11. The review also found that a small number of requesters who use the Act very regularly account for a substantial proportion of the overall costs of delivering Freedom of Information. They account for 14% of requests by volume and 26% by value. Requests made by these users tend to cost substantially more than standard requests and take up substantial levels of resources.
12. The review explored options for amending the Regulations. It found that including reading, consideration and consultation time in calculations of the appropriate limit, as well as allowing aggregation of non-similar requests, would have the greatest impact in reducing the most resource-intensive requests, while ensuring that the large majority of requests for information were not affected.
13. Following the conclusions of the review, the Government announced that it was minded to change the fee Regulations to allow public authorities to:
 - include reading time, consideration time and consultation time in the calculation of the appropriate limit above which requests could be refused on cost grounds; and
 - aggregate requests made by any person or persons apparently acting in concert, to each public authority for the purposes of calculating the appropriate limit.
14. The Government also announced that it was **not** minded to agree the following:

- a flat fee for all requests; and
 - a reduction in the appropriate limit to £400.
15. The Government has taken stock of responses to this announcement, and proposes to introduce new fee Regulations in 2007. The draft Regulations allow public authorities to take in to account more accurately the work involved in dealing with FOI requests to allow public authorities to provide the right balance between access to information to all and the delivery of public services.

Consultation

16. Following the Government's announcement that it was minded to introduce the changes referred to at paragraph 13 of this RIA, the Government took stock of the responses it received from a range of interested parties, including media organisations, campaign groups and representatives from the public sector.
17. Having taken stock of responses the Government has produced draft Regulations for consultation. The consultation is being held for 12 weeks.

Options

18. In deciding how best to achieve its objective, the Government has considered the following options:

Option 1 – do nothing

19. The first option is to do nothing, and leave the 2004 fee Regulations in force.

20. The findings of the independent review make it clear that at present a small percentage of requests and requesters are imposing a disproportionately large burden on public authorities. Doing nothing would leave public authorities without an effective means of dealing with such requests. They would continue to be obliged to comply with requests that impose disproportionate burdens on them, which would in turn affect their ability to deliver other core public services effectively and efficiently.

Option 2 – introduce new Regulations allowing the inclusion of reading, consideration and consultation time, and aggregation of non-similar requests

21. The powers conferred by the existing 2004 Regulations would remain unchanged but the draft 2007 Regulations will also:
- allow public authorities to include in an appropriate limit calculation the costs of **examining** requested information, or a document containing it, for the purpose of ascertaining the nature or content of the information. A public authority would be able to include the costs of examining information on **one occasion** only;
 - allow public authorities to include in an appropriate limit calculation the costs of time spent **consulting** with any person or persons except the applicant. This would include consultation with other public authorities. A public authority would only be able to include the consultation time it would reasonably expect to spend in determining the applicability of exemptions in part II of the Act, and in determining whether the public interest falls in favour of maintaining a qualified exemption;
 - allow public authorities to include in an appropriate limit calculation the costs of time it reasonably expects to spend **considering** the applicability of exemptions in part II of the Act to the requested information, and/or whether the public interest falls in favour of maintaining a qualified exemption;

- introduce costing mechanisms that **limit** the extent to which a public authority can include the costs of time spent on consultation and consideration;
 - require public authorities to cost all of the above activities at a standard rate of **£25 per hour** for staff time (in line with the current Regulations); and
 - allow public authorities for the purposes of an appropriate limit calculation to **aggregate** the costs of all requests received from a person, or persons acting in concert or in pursuance of a campaign, within 60 working days in certain circumstances.
22. Amending the fee Regulations in this way would target only the small percentage of requests that impose the highest burdens on public authorities, by ensuring that in appropriate circumstances public authorities were not obliged to comply with them. Public authorities' duty to advise and assist applicants to refine such requests would remain unchanged. The significant majority of requests for information would not be affected by the changes.

23. The table below from the review shows the estimated volume reduction of requests and savings in the cost of officials' time⁸ if these proposals were adopted, according to the independent review:

	Central Government		Wider Public Sector	
	Volume reduction	Reduction in cost of officials' time	Volume reduction	Reduction in cost of officials' time
Including reading, consideration and consultation time	1,346 (4%)	£3.2m (37%)	5,991 (7%)	£5.0m (49%)
Aggregating non-similar requests	2,817 (8%)	£0.7m (8%)	7,315 (8%)	£1.0m (8%)

Option 2 - risks

24. There would be certain risks associated with introducing the draft Regulations, although it is anticipated that these risks could be successfully mitigated.
25. The draft Regulations would introduce additional factors to consider when formulating an appropriate limit calculation, raising the risk of incorrect or inconsistent application across public authorities. However, this risk could successfully be mitigated by issuing appropriate, easy-to-use guidance. The consultation will help identify areas for which guidance is particularly

⁸ These represent upper limit estimates for cost savings as they do not take account of the costing mechanisms that have been included in the draft Regulations.

important and identify where the draft Regulations could be clarified to ensure consistency.

26. The inclusion of consideration and consultation time in appropriate limit calculations could also, on the face of it, present the risk of a high percentage of “complex” requests being rejected, because these are the requests that usually require the greatest amount of consideration and consultation time. However, the Government is of the opinion that this risk is successfully mitigated by the inclusion in the Regulations of the following features:

- that consideration time can only be included in appropriate limit calculations for the purpose of determining the applicability of exemptions (including whether the public interest favours maintaining a qualified exemption); and
- that a public authority could only include in its appropriate limit calculations the costs associated with consultation and/or consideration activities where they reasonably expected that the costs attached to the relevant activity would exceed “the additional costs threshold”. The Regulations sets that amount at £100 for central Government and Parliament, and £75 for the wider public sector. Once the threshold was exceeded, a public authority could include in its calculations all of the costs of consultation and/or consideration activities (including the first £100/£75) up to a ceiling of £400 for central Government and £300 for the wider public sector.

27. The effect of the former would be to ensure that only those activities necessary in order to determine the applicability of exemptions or the balance of the public interest could be included in calculations – any incidental activities (e.g. press briefing, etc.) could not be included. The effect of the latter would be to ensure that consideration time on its own could not result in a public authority declining to comply with a request. Other factors (including the volume of information falling within the scope of the request and the extent to which consultation outside the public authority

was required) would have to be present to push the costs of any request over the appropriate limit.

28. Whenever requests are refused on cost grounds, there is a risk that applicants will be deterred from pursuing requests for information under the Act. This is not the intention. This risk could be mitigated by ensuring that guidance on the fee Regulations emphasises the importance of providing advice and assistance to applicants, to help them refine requests to bring them within the appropriate limit.
29. There is a risk that in allowing aggregation of non-similar requests public authorities would have the effect of imposing rigid quotas on requests submitted by frequent users of the Act, particularly organisations.
30. This risk would be mitigated by providing clear guidance to public authorities on how aggregation should be employed when it is reasonable to do so and particularly guidance on factors which they may take into account when determining reasonableness. These might include:
 - the costs which the authority would incur only in dealing with the most recent request, i.e. ignoring any costs which would have to be incurred in any event in dealing with earlier requests (the greater the additional costs imposed by the latest request, the more reasonable it may be to aggregate costs for the purpose of responding to that request);
 - the level of disruption to the public authority, or to particular departments or individuals within the authority, that would be caused by answering a series of non-similar requests (it may be more reasonable to aggregate such requests where the same officials would be required to deal with them and the cumulative effect of doing so would be to interfere disproportionately with the delivery of their duties);
 - whether the requester is an individual who is not making the request in the course of a business or profession (it may be more reasonable to

aggregate requests which are made by a company or by an individual for commercial or professional purposes);

- the course of dealings between the requester and the public authority in relation to the requester's FOI requests, which could include requests made outside the 60-day period (it may be more reasonable to aggregate requests made by a person who had made a large number of requests to the authority in the past, or whose conduct in relation to previous requests has been uncooperative or disruptive).

31. Public authorities would also be under a duty to provide advice and assistance in respect of any aggregated requests that they were not obliged to comply with because of the appropriate limit. The requesters would still be able to pursue their request for information by reformulating their request to make it more targeted and /or focused.
32. As identified in the independent review, there is a further risk that aggregation of non-similar requests would be susceptible to "evasion". Applicants could use multiple e-mail addresses to circumvent the Regulations. However, the current Regulations, which allow aggregation of requests for the same or similar information, are also susceptible to evasion, but have proved capable of effective application by public authorities in appropriate circumstances. Provided public authorities make it clear that they are willing to engage with an applicant under the section 16 duty to advise and assist, it is reasonable to expect that a power to aggregate will have at least some effect in reducing disproportionate burdens.
33. The Government will consult on the draft Regulations for 12 weeks, starting on 14 December 2006. Following consultation, the Regulations will be subject to the negative resolution procedure in Parliament.

Option 3 – Introduce new Regulations allowing public authorities to charge a flat rate fee for complying with a request

34. The independent review found that, on its own, a flat rate fee would be likely to reduce the volume of requests by around 47% for central government and 39% for the wider public sector, and the costs of officials' time by 44% and 38% respectively.
35. From these figures, it can be seen that a large proportion of the requests deterred by a flat rate fee would be the less costly, one-off requests from members of the public.
36. A further key issue with this option that was identified by the independent review was how to implement a payment scheme for requests in organisations that do not otherwise have to collect small sums of money on a regular basis. This issue was identified as applying primarily to central government departments. They were asked what the effect would be of having to charge a small fee, for example £15. They replied to the effect that the administrative burden of collecting such a small sum would in fact cost more than the fee was worth, about £30-£100 per fee collected. This in turn suggested that if a fee of £15 were implemented, such public authorities would make a loss of between £15 and £85 on every fee collected.
37. These findings indicate that introducing a flat rate fee would not allow public authorities to alleviate the disproportionate burdens placed on public authorities by a small percentage of requests. Rather, it would deter the less costly, one-off requests from members of the public. It would be highly unlikely that the most expensive requests would be deterred by a flat rate fee. For this reason the Government decided it was not minded to introduce a flat rate fee at this stage.

Option 4 – introduce new Regulations lowering the appropriate limit

38. The independent review assessed the impact of reducing the appropriate limit to £400 for central government and £300 for the wider public sector. It indicated that burdens would only be reduced by a small percentage, a 1% volume reduction for central government and a 2% reduction for the wider public sector, and that the savings in terms of officials' time would be minimal.
39. The Government's objective is to allow public authorities to alleviate the disproportionate burdens placed on them by a small percentage of requests, and the evidence does not point towards a lowering of the appropriate limit achieving this objective. The Government is not minded to make this change either.

Costs and benefits - sectors and groups affected

Applicants

40. The independent review suggests that the significant majority of requests submitted by applicants under the Act would not be affected by the proposed changes. The proposals would affect only the following:
- any applicant submitting one of the small percentage of requests (4%) that result in reading, consideration and consultation time imposing disproportionate burdens for public authorities; and
 - the small number of applicants who use the Act very regularly, and impose disproportionate burdens by doing so.

The independent review found four main groups of individuals and organisations that tend to use the Act very regularly. They are:

- journalists;
- MPs;
- campaign groups; and
- researchers.

41. It is likely that the proposals would have a greater effect on these types of requester than on private individuals. In particular, the independent review found that journalists generated a significant number of FOI requests. It estimated that journalists accounted for around 10% of initial FOI requests made to central government and around 20% of the cost of these requests.

42. However, there are two key factors to ensure the impact of the proposals on all of these applicants are proportionate. These are:

- the continuing requirement under section 16 of the Act that a public authority provide an applicant with advice and assistance to help refine a request that exceeds the appropriate limit; and
- ensuring that public authorities only aggregate requests for the purposes of appropriate limit calculations where it is reasonable to do so.

43. Public authorities would still be required under the Act to give advice and assistance. They would be required to engage with applicants to help them refine requests, in order to target information more accurately. This would prevent applicants putting in requests that were too widely defined and encourage requests to be made in a more targeted form.

44. There may be some cost to requesters, and the public at large, if the proposals result in a decrease in the volume of information released under the Act. It is impossible to quantify such costs. However, by submitting

more targeted requests many applicants will still be able to receive the information they want but in a way that does not create a disproportionate burden on public authorities.

Public authorities

45. Public authorities would benefit from being better able to calculate and take account of the actual costs that would be incurred in complying with requests for information, to provide the right balance between access to information for all and the delivery of other public services.
46. The independent review estimated that allowing public authorities to include reading, consideration and consultation time in their appropriate limit calculations would reduce the amount of time spent dealing with such requests by 37% in central government and 49% in the wider public sector. Allowing public authorities to aggregate non-similar requests would reduce the amount of time spent dealing with requests from the small number of applicants who use the Act very regularly and so impose disproportionate burdens, by a further 8% in both central government and the wider public sector.
47. These measures would therefore have the benefit of ensuring that a better balance is struck across the public sector between access to information for all and the delivery of other public services. They would significantly reduce the likelihood of requests for information causing disproportionate disruption to public authorities' other public service duties.
48. The Government has consistently encouraged public authorities to make information available proactively. Doing so has significant benefits for applicants, as information is readily accessible. It also benefits public authorities, who receive fewer and better targeted requests. The Government would continue to encourage public authorities to make information available proactively.

49. The costs to public authorities of these proposals would be minimal. There would be no requirement to introduce major changes to their systems for dealing with information requests, as the changes are simply extensions of existing provisions.
50. For the draft Regulations to have the desired effect, it would be necessary for public authorities to ensure that their practitioners and officials have the necessary expertise to apply the Regulations correctly. Some costs would be incurred in updating internal guidance and in staff training. However, such costs are likely to be minimal within each public authority, and could be viewed as the usual costs of staying abreast of developments in any field of legislation. The costs of issuing updated guidance across the public sector on the new fee Regulations would be borne by the Department for Constitutional Affairs, as the lead department for FOI.
51. There would also be an increase in the number of occasions on which public authorities would have to spend time engaging with applicants in order to meet their obligations to offer advice and assistance under section 16 of the Act. However, over time, applicants will become more skilled at targeting their requests. Public authorities with well designed publication schemes will also assist applicants in making better targeted requests (by providing access to information on which applicants may base follow up requests).
52. There is a risk that, in the immediate aftermath of the changes, there will be an increase in the number of appeals against the application of the fee Regulations, leading to an increase in associated costs. It is impossible to say with any certainty how significant these costs might be – the independent review found that the costs to public authorities of internal reviews were on average five times greater than the costs of dealing with initial requests. However, it is reasonable to assume that increase will be confined to the immediate aftermath of the changes. The publication of detailed guidance on the new Regulations, together with the provision of appropriate advice and assistance by public authorities will also reduce this risk.

Costs and benefits - conclusion

53. The Government believes that the benefits of introducing the proposed changes would outweigh the costs.
54. The proposals would affect only a small percentage of requests and requesters, but would have significant benefits for public authorities in terms of potential reductions in the amount of time they are required to spend dealing with requests, at the expense of their other public service duties. The Government would in due course issue detailed guidance on the operation of the revised fee Regulations, informed by the public consultation. The financial costs involved in introducing the changes would be minimal, and limited to those stemming from ensuring that officials were aware of and understood the changes. The Department for Constitutional Affairs would bear the costs of issuing revised guidance on the operation of the fee Regulations to the public sector.

Administrative burdens and compensatory simplification

55. The Act does not create any specific burdens on the private sector, it only places obligations on public authorities. Businesses have the right to request information under the Act, as do any other individuals or organisations.
56. The burden of complying with requests lies with the public authorities receiving them, and the proposed changes to the fee Regulations should reduce those burdens. In this instance it is not considered necessary to offset the Regulations by any simplification measure.

Small firms impact assessment

57. The Act provides access to information for any person submitting a written request for recorded information. This includes small firms, which may seek to access information for a range of purposes. However, it is clear that, for the purposes of Freedom of Information, small firms are treated the same as any individual member of the public.
58. There is no evidence to suggest that small businesses submit a significant number of the small percentage of requests that would be affected by the proposals. Nor did the independent review identify small firms as one of the classes of requester that use the Act very regularly and impose disproportionate burdens by doing so. Requests submitted by small firms would therefore not be any more likely to be subject to aggregation under the proposals than anyone else's requests. There is therefore no evidence to suggest that the proposals would affect small firms any more than they would affect any member of the public.

59. The Government has in any case consistently encouraged all public authorities to release on their websites information that has been requested by, or would be of interest to, both commercial and ordinary users of the Act. This would continue under the new proposals.

Enforcement, sanctions and monitoring

60. No change would be made to the current enforcement regime. The revised Regulations would continue to be subject to enforcement by the Information Commissioner and Information Tribunal. Applicants dissatisfied with the way in which the Regulations had been applied can complain to the Information Commissioner, after exhausting a public authority's internal appeals process.
61. The Department for Constitutional Affairs publishes quarterly monitoring statistics, detailing how public authorities have dealt with requests for information under the Act. These statistics include information about the number of requests refused. This would continue to be the case following the implementation of the draft Regulations.

Contact:

Information Rights
DCA, 6th Floor, Selborne House,
105 Victoria Street,
London, SW1E 6QT
Telephone 020 7210 8034

The Consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better Regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gsi.gov.uk

Alternatively, you may wish to write to the address below:

Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper.

