Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Adroddiad y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ar Fil Senedd y DU ynghylch Diogelu Rhyddidau (Memorandwm Cydsyniad Deddfwriaethol)

Cefndir

1. Ar 10 Tachwedd 2011, gosododd Prif Weinidog Cymru Femorandwm Cydsyniad Deddfwriaethol (y Memorandwm) mewn perthynas â Bil Senedd y DU ynghylch Diogelu Rhyddidau. Ar 1 Tachwedd 2011, cafodd y Memorandwm ei ystyried gan y Pwyllgor Busnes a chafodd ei gyfeirio at y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol i graffu arno o dan Reol Sefydlog 29.4 cyn iddo gael ei drafod yn y Cyfarfod Llawn. Cytunwyd mai'r dyddiad ar gyfer cyflwyno adroddiad arno fyddai 24 Ionawr 2012 fan bellaf.

2. Ystyriodd y Pwyllgor y Memorandwm yn ystod ei gyfarfod ar 5 Rhagfyr. Rhoddwyd ar ddeall i'r Pwyllgor y bydd Cynnig Cydsyniad Deddfwriaethol mewn perthynas â'r Memorandwm yn cael ei drafod yn y Cyfarfod Llawn ar 31 Ionawr 2012.

Y Bil

3. Cafodd y Bil Ail Ddarlleniad yn Nhŷ'r Cyffredin ar 1 Mawrth 2011 a chwblhaodd ei daith drwy Dŷ'r Cyffredin ar 11 Tachwedd 2011. Ers hynny, mae wedi cael Ail Ddarlleniad yn Nhŷ'r Arglwyddi, a chychwynnodd y Cyfnod Pwyllgor ar 29 Tachwedd 2011.

4. Mae saith Rhan i'r Bil, sy'n cynnwys:

- darpariaeth mewn perthynas â chadw a dinistrio olion bysedd, olion esgidiau a samplau DNA a phroffiliau a gymerwyd yn ystod ymchwiliad troseddol;
- gofyniad ar ysgolion a cholegau addysg bellach i gael caniatâd gan riant pob plentyn sydd o dan 18 mlwydd oed ac sy'n mynychu'r ysgol neu'r coleg, cyn y gall yr ysgol neu'r coleg brosesu gwybodaeth fiometrig am y plentyn;
- darpariaeth mewn perthynas â rheoli ymhellach y defnydd o dechnoleg Teledu Cylch Cyfyng, Systemau Adnabod Rhifau Ceir yn Awtomatig a thechnoleg camerâu gwyliadwriaeth eraill a weithredir gan yr heddlu ac awdurdodau lleol;

- diwygio Deddf Rheoleiddio Pwerau Ymchwilio 2000 i'w gwneud yn ofynnol i awdurdodau lleol gael cymeradwyaeth farnwrol ar gyfer defnyddio unrhyw un o'r tair techneg ymchwilio cudd sydd ar gael iddynt o dan y Ddeddf, sef caffael a datgelu data cyfathrebu, a'r defnydd o system wyliadwriaeth gyfeiriedig a ffynonellau gwybodaeth ddynol guddiedig;
- darpariaeth mewn perthynas â phwerau i fynd ar dir neu i mewn i eiddo arall. Mae'r darpariaethau'n galluogi Gweinidog y Goron (neu Weinidogion Cymru), drwy orchymyn, i ddiddymu pwerau mynediad dianghenraid, i ychwanegu mesurau diogelwch mewn perthynas ag arfer pwerau o'r fath, neu i gael pwerau newydd yn lle pwerau o'r fath yn amodol ar fesurau diogelwch ychwanegol. Rhoddir dyletswydd ar bob Gweinidog Cabinet i adolygu'r pwerau mynediad presennol gyda'r bwriad o ystyried a ddylid arfer unrhyw un o'r pwerau gwneud gorchmynion uchod. Gwneir darpariaeth hefyd ar gyfer arfer y pwerau mynediad, sy'n destun darpariaethau cod ymarfer;
- darpariaeth mewn perthynas â gorfodi tramgwyddau parcio;
- darpariaeth mewn perthynas â phwerau gwrthderfysgaeth;
- diwygio Deddf Diogelu Grwpiau Agored i Niwed 2006;
- diwygio Deddf yr Heddlu 1997, sy'n nodi'r fframwaith ar gyfer datgelu collfarnau troseddol a gwybodaeth berthnasol arall ar dystysgrifau a roddwyd gan y Swyddfa Cofnodion Troseddol;
- darpariaeth i sefydlu sefydliad newydd o'r enw y Gwasanaeth Datgelu a Gwahardd, a fydd yn disodli'r Awdurdod Diogelu Annibynnol a'r Swyddfa Cofnodion Troseddol ac yn dwyn ynghyd eu swyddogaethau;
- darpariaeth i berson wneud cais i'r Ysgrifennydd Gwladol i ddiystyru collfarn neu rybudd am dramgwydd o dan adran 12 neu 13 o Ddeddf Troseddau Rhywiol 1956, a throseddau cysylltiedig, sy'n cynnwys cael rhyw hoyw cydsyniol â pherson arall 16 oed neu hŷn;
- diddymu adran 43 o Ddeddf Cyfiawnder Troseddol 2003, sy'n creu darpariaeth i rai treialon penodol o dwyll gael eu cynnal heb reithgor; ac
- yn cael gwared ar y cyfyngiadau ar yr adegau pan ellir cynnal priodas neu wasanaeth partneriaeth sifil.

5. Yn Rhan 6, ceir y pwnc ar gyfer y Memorandwm Cydsyniad Deddfwriaethol presennol ac mae'n diwygio Deddf Rhyddid Gwybodaeth 2000 a Deddf Diogelu Data 1998. Mae pedwar o newidiadau. Yn gyntaf, mae'n diwygio'r Ddeddf Rhyddid Gwybodaeth i greu darpariaeth sy'n caniatáu i awdurdodau lleol ailddefnyddio setiau data, yn amodol ar y Ddeddf honno. Yn ail, mae'n diwygio'r diffiniad o gwmni sydd o dan berchnogaeth gyhoeddus at ddibenion y Ddeddf Rhyddid Gwybodaeth fel ei fod yn cynnwys cwmnïau sydd o dan berchnogaeth dau awdurdod lleol neu fwy. Yn drydydd, mae'n ymgorffori gwelliannau a wnaed yng Ngogledd Iwerddon i'r Ddeddf Rhyddid Gwybodaeth gan Ddeddf Llywodraethu a Diwygio Cyfansoddiadol 2010. Yn olaf, mae'n diwygio'r Ddeddf Rhyddid Gwybodaeth a'r Ddeddf Diogelu Data i adolygu'r trefniadau ar gyfer penodi i swyddfa'r Comisiynydd Gwybodaeth a'r cyfnod yn y swydd, ac i wneud

newidiadau i rôl yr Ysgrifennydd Gwladol mewn perthynas â'r swyddogaethau penodol a roddir ar waith gan y Comisiynydd Gwybodaeth.

Y Memorandwm Cydsyniad Deddfwriaethol

6. Cafodd Memorandwm Cydsyniad Deddfwriaethol blaenorol mewn perthynas â'r Bil hwn ei ystyried gan y Cynulliad ar 15 Mawrth 2011 (NDM4680):

> *"Cynnig bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 26.4, yn cytuno y dylai Senedd y DU ystyried darpariaethau yn y Mesur Seneddol ynghylch Diogelu Rhyddidau i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru."*

Er i'r Cynnig hwnnw gael ei fynegi mewn termau cyffredinol iawn, roedd cymhwysedd deddfwriaethol y Cynulliad ar y pryd yn gyfyngedig iawn. Cafodd cymhwysedd deddfwriaethol y Cynulliad ei ymestyn yn sylweddol pan ddaeth Rhan 4 o Ddeddf Llywodraeth Cymru 2006 i rym, ac mae Memorandwm Cydsyniad Deddfwriaethol arall yn angenrheidiol ym marn y Llywodraeth.

7. Mae'r cynnig newydd yn darllen fel a ganlyn:

> *"Bod Cynulliad Cenedlaethol Cymru, yn unol â Rheol Sefydlog 29.6, yn cytuno y dylai Senedd y DU ystyried, yn ychwanegol at y darpariaethau y cyfeiriwyd atynt yn NDM4680, y darpariaethau pellach hynny a ddygwyd gerbron yn y Bil Diogelu Rhyddidau sy'n ymwneud â rhyddid gwybodaeth a diogelu data, i'r graddau y maent yn dod o fewn cymhwysedd Cynulliad Cenedlaethol Cymru."*

8. Mae'r cynnig yn deillio o welliannau a gynigiwyd gan yr Ysgrifennydd Cartref yn ystod y Cyfnod Adrodd yn Nhŷ'r Cyffredin, a bellach maent wedi'u cynnwys fel rhannau o gymal 100 yn y Bil. Mae testun y cymal hwnnw wedi'i nodi yn Atodiad 1 i'r papur hwn, ac mae'r testun a ychwanegwyd gan y gwelliannau wedi'i danlinellu. Ceir esboniad manwl o gymal 100, a ddaw o'r Memorandwm Esboniadol a baratowyd gan y Swyddfa Gartref ar gyfer y trafodion Seneddol, yn Atodiad 2 i'r papur hwn.

9. Mae'r gwelliannau'n ymwneud yn benodol ag awdurdodau cyhoeddus yn codi tâl mewn cysylltiad â gwneud y gwaith sydd o dan hawlfraint ar gael i'w ailddefnyddio. Mae Llywodraeth Cymru yn esbonio ym mharagraff 7 o'i Femorandwm Cydsyniad Deddfwriaethol y rhesymau dros y gwelliannau fel a ganlyn:

> *"Roedd y gwelliannau'n ymwneud â'r darpariaethau codi tâl, a fyddai wedi cael yr effaith anfwriadol o gael gwared ar y posibilrwydd o godi*

tâl am unrhyw setiau data y gofynnir amdanynt gan awdurdod cyhoeddus. Nod y gwelliannau yw cadw'r pwerau statudol presennol i godi tâl a darparu pŵer i wneud rheoliadau newydd er mwyn caniatáu codi tâl. Byddai'r gwelliannau hyn yn sicrhau (1) y gall yr holl awdurdodau cyhoeddus sydd â phwerau statudol ar hyn o bryd (ac eithrio o dan Reoliadau Ailddefnyddio Gwybodaeth y Sector Cyhoeddus 2005) barhau i ddefnyddio'r pwerau hynny i godi tâl a (2) y gall yr holl awdurdodau cyhoeddus nad ydynt yn meddu ar eu pwerau statudol eu hunain, ond y cânt ddefnyddio Rheoliadau Ailddefnyddio Gwybodaeth y Sector Cyhoeddus i godi tâl, neu sy'n codi tâl o dan bŵer anstatudol (ee cyfraith gyffredin neu bwerau uchelfreiniol), barhau i godi tâl o dan y rheoliadau newydd."

Casgliad

10. Mae'n amlwg bod y mater o fewn cymhwysedd deddfwriaethol y Cynulliad, gan fod 'Mynediad at wybodaeth a gaiff ei chadw gan awdurdodau cyhoeddus mynediad agored' wedi'i gynnwys yn benodol o dan 'Gweinyddiaeth Gyhoeddus' yn Atodlen 7 i Ddeddf Llywodraeth Cymru 2006. Mae Llywodraeth Cymru wedi cadarnhau bod y gwelliannau'n gyson â'i hamcan polisi i warchod ffrydiau ariannu awdurdodau cyhoeddus. Mae'n newid penodol iawn i'r Bil yr oedd y Cynnig blaenorol a gymeradwywyd gan y Cynulliad yn cyfeirio ato, a oedd yn ymwneud â deddfu yn San Steffan ynghylch rhyddhau setiau data. Nid yw'n debygol y bydd Bil Cynulliad yn cael ei gyflwyno yn y dyfodol agos a fyddai'n cynnwys cyfrwng priodol ar gyfer y darpariaethau hyn. Byddai'n ddefnyddiol i ddefnyddwyr y ddeddfwriaeth, ac i awdurdodau lleol yn benodol, pe byddai'r mater o godi tâl yn cael ei drafod ar yr un pryd â'r dyletswyddau sy'n berthnasol iddo a'u bod yn cael eu cynnwys yn yr un ddeddfwriaeth.

11. O dan yr amgylchiadau hyn, cytunodd y Pwyllgor fod Cynnig Cydsyniad Deddfwriaethol yn ffordd briodol o ymdrin â'r mater, a nododd na welai unrhyw reswm pam na allai'r Cynulliad gytuno ar gynnig o'r fath.

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Ionawr 2012

Part 6

Freedom of information and data protection

Publication of certain datasets

100 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 20(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) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with subsection (2). .

(4) Nothing in this section or section 11B prevents a public authority which is subject to a duty under subsection (2) from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use. .

(5) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (4)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a "re-use fee notice") stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with subsection (2). .

(6) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with subsection (2) while any part of the fee which is required to be paid is unpaid. .

(7) Where a public authority intends to charge a fee as mentioned in subsection (4), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged. .

(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);
"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 the database;
"relevant copyright work" means—
(a) a copyright work, or
(b) a database subject to a database right,
but excludes a relevant Crown work or a relevant Parliamentary work;
"relevant Crown work" means—
(a) a copyright work in relation to which the Crown is the copyright owner, or
(b) a database in relation to which the Crown is the owner of the database right;

"relevant Parliamentary work" means—
(a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or
(b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;
"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.

11B Power to charge fees in relation to release of datasets for re-use .
(1) The Secretary of State may, with the consent of the Treasury, make provision by regulations about the charging of fees by public authorities in connection with making relevant copyright works available for re-use under section 11A(2) or by virtue of section 19(2A)(c). .

(2) Regulations under this section may, in particular— .

(a) prescribe cases in which fees may, or may not, be charged, .

(b) prescribe the amount of any fee payable or provide for any such amount to be determined in such manner as may be prescribed, .

(c) prescribe, or otherwise provide for, times at which fees, or parts of fees, are payable, .

(d) require the provision of information about the manner in which amounts of fees are determined, .

(e) make different provision for different purposes. .

(3) Regulations under this section may, in prescribing the amount of any fee payable or providing for any such amount to be determined in such manner as may be prescribed, provide for a reasonable return on investment. .

(4) In this section "relevant copyright work" has the meaning given by section 11A(8)." .

(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. .

(2B) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with a requirement imposed by virtue of subsection (2A)(c). .

(2C) Nothing in this section or section 11B prevents a public authority which is subject to such a requirement from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use. .

(2D) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (2C)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a "re-use fee notice") stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with the requirement imposed by virtue of subsection (2A)(c). .

(2E) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with the requirement imposed by virtue of subsection (2A)(c) while any part of the fee which is required to be paid is unpaid. .

(2F) Where a public authority intends to charge a fee as mentioned in subsection (2C), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged." .

(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);
"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. 1997/3032S.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 the database;
"relevant copyright work" means—
(a) a copyright work, or

(b) a database subject to a database right,

but excludes a relevant Crown work or a relevant Parliamentary work;

"relevant Crown work" means—

(a) a copyright work in relation to which the Crown is the copyright owner, or

(b)a database in relation to which the Crown is the owner of the database right;

"relevant Parliamentary work" means—

(a)a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or

(b)a database in relation to which the House of Commons or the House of Lords is the owner of the database right;

"the specified licence" has the meaning given by section 11A(8)."

(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);".

ATODIAD 2

Detholiad o'r Memorandwm Esboniadol ar gyfer Bil Senedd y DU ynghylch Diogelu Rhyddidau fel y'i trosglwyddwyd i Dŷ'r Arglwyddi.

"Part 6: Freedom of information and data protection

Clause 100: Release and publication of datasets held by public authorities

377. Clause 100 amends the Freedom of Information Act 2000 ("FOIA") which currently provides for access to information held by public authorities.

378. Subsection (2) amends section 11 of the FOIA (means by which communication to be made). Paragraph (a) inserts a new subsection (1A) which provides that where a request is made for information that is a dataset, or which forms part of a dataset, held by the public authority, and the applicant requests that information be communicated in an electronic form, then the public authority must, as far as is reasonably practicable, provide the information to the applicant in an electronic form that is capable of re-use, in other words a re-usable format.

379. There is no absolute duty for datasets to be provided in a re-useable format as it is recognised that, in some instances, there may be practical difficulties in relation to costs and IT to convert the format of the information. A re-usable format is one where the information is available in machine-readable form using open standards which enables its re-use and manipulation. If the applicant does not want to have the dataset communicated in electronic form, because for example, he or she wants the dataset in hard copy only, then the new duty in section 11(1A) will not arise. However, the public authority would still need to comply with the preference expressed, by virtue of the existing duty in section 11(1)(a) of the FOIA, and must provide the dataset in hard copy so far as it is reasonably practicable to do so.

380. Paragraph (b) amends section 11(4) by providing that the discretion which a public authority has in relation to the means by which communication of the information is to be made (which is already subject to the duty in section 11(1) of the FOIA) is now additionally subject to the new duty in section 11(1A).

381. Paragraph (c) of subsection (2) inserts new subsection (5) and provides for the definition of "dataset" for the purposes of the Act. The definition makes it clear that a dataset is a subset of information within the meaning of the FOIA. The definition provides that a dataset is a collection of information held in electronic form where all or most of the information meets the criteria set out in the following paragraphs of the new section 11(5).

382. The new subsection (5)(a) requires that the information in a dataset has to have been obtained or recorded by a public authority for the purpose of providing the authority with information in connection with the provision of a service by that authority or the carrying out of any other function of the authority.

383. New subsection (5)(b) requires that the information is factual in nature and (a) is not the product of interpretation or analysis other than calculation, in other words that it is the 'raw' or 'source' data; and (b) provides that it is not an official

statistic within the meaning given by the Statistics and Registration Service Act 2007 ("SRSA 2007"). Official statistics have been excluded from the definition of datasets as the production and publication of official statistics is provided for separately in the SRSA 2007.

384. New subsection (5)(c) requires that the information within datasets has not been materially altered since it was obtained or recorded. Datasets which have had 'value' added to them or which have been materially altered, for example in the form of analysis, representation or application of other expertise, would not fall within the definition for the purposes of new subsection (5). Examples of the types of datasets which meet the definition, though not a comprehensive list, will include datasets comprising combinations of letters and numbers used to identify property or locations, such as postcodes and references; datasets comprising numbers and information related to numbers such as spend data; and datasets comprising text or words such as information about job roles in a public authority.

385. Subsection (3) inserts new sections 11A and 11B into the FOIA which provide for the new duty to make a dataset available for re-use and the charging of fees. New section 11A(1) provides for the four criteria which must be met for the new section to apply: (a) that a person must have made a request for a dataset; (b) that the dataset requested includes a 'relevant copyright work'; (c) that the public authority is the only owner of the 'relevant copyright work', in other words that it is not jointly owned with another party or that it is not owned in whole or in part by a third party; and (d) that the public authority is communicating the relevant copyright work to the requester under the FOIA, in other words that the dataset requested is not being withheld under one of the exemptions provided for in the FOIA.

386. New section 11A(2) provides that when communicating such a dataset to an applicant, the public authority must make the dataset available for re-use in accordance with the terms of a specified licence. New section 11A(3) to (7) makes provision for the charging of fees by public authorities for making datasets available for re-use. New subsection (3) provides that a public authority may charge a fee by virtue of regulations made under new section 11B and new subsection (4) preserves existing statutory powers for public authorities to charge a fee. New subsection (5) provides that where a public authority intends to charge a fee, it must give the applicant a "re-use fee notice", which states the amount of the fee which must be paid before the dataset is available for re-use. New subsection (6) provides that where the public authority has given the applicant a re-use notice, it is not required to make the dataset available for re-use until the fee is paid in accordance with the notice; and new subsection (7) provides that if a public authority is exercising any existing statutory power to charge, the authority may combine the re-use fee notice with any other notice in accordance with the relevant statutory power being exercised.

387. New section 11A(8) adds definitions of "copyright owner", "copyright work", "database", "database right", "owner", "relevant copyright work", and "the specified licence" to section 11A of the FOIA. The definition of a "relevant copyright work" excludes a "relevant Crown work" and a "relevant Parliamentary work" which are separately defined.

388. Crown owned works are excluded from the requirement on public authorities to make datasets available for re-use under the terms of a licence specified by the

Secretary of State. This is because the Controller of Her Majesty's Stationery Office, who is appointed by letters patent from the Queen to manage Crown owned works, already has the authority to require these works and databases to be made available for re-use under the terms of a licence.

389. Parliamentary owned works and databases are excluded from the requirement on public authorities to make such datasets available for re-use because it would not be appropriate to make Parliament subject to a direction of the Secretary of State as new section 11A of the FOIA would in effect do by way of the specified licence in the code of practice under section 45 of the FOIA.

390. New section 11B makes further provision about the charging of fees by public authorities for making datasets (containing relevant copyright works) available for re-use. Subsection (1) confers a power on the Secretary of State to make regulations (subject to the negative resolution procedure) about the charging of fees in connection with making the datasets available for re-use in response to requests under the FOIA and publication schemes. Subsections (2) and (3) set out what the regulations may prescribe, such as when a fee may or may not be charged and how much that fee might be.

391. Subsection (4) amends section 19 (publication schemes) of the FOIA. Paragraph (a) inserts new subsections (2A) to (2F) into section 19 of the FOIA. Under new section 19(2A), publication schemes must include a requirement for the public authority to publish any dataset it holds, which is requested by an applicant, and any updated version of a dataset, unless the authority is satisfied that it is not appropriate for the dataset to be so published (new subsection (2A)(a)). It requires public authorities, where reasonably practicable, to publish any dataset under new subsection (2A)(a) in an electronic form which is capable of re-use (new subsection (2A)(b)) Subject to new subsection(2B), it also requires public authorities to make any relevant copyright work (if the authority is the only owner) available for re-use in accordance with the terms of the specified licence. New subsections (2B) to (2F) mirror new section 11A(2A) to (2E) by making equivalent provision in respect of publication schemes for the charging of fees by public authorities for making datasets (where they contain relevant copyright works) available for re-use.

392. Paragraph (b) of subsection (4) inserts a new subsection (8) into section 19 of the FOIA which provides definitions of "copyright owner", "copyright work", "database", "database right", "owner", "relevant copyright work" and "the specified licence". The definition of a "relevant copyright work" excludes a "relevant Crown work" and a "relevant Parliamentary work" which are separately defined.

393. Subsection (5) amends section 45 of the FOIA (issue of code of practice). Paragraph (a) amends the list in section 45(2) of the FOIA, which sets out the matters that must be included in the code of practice made under that section, to insert a new requirement for the code of practice to include provision relating to the disclosure by public authorities of datasets held by them. Paragraph (b) sets out the different provisions relating to the re-use and disclosure of datasets that may, in particular, be included in the code of practice under section 45 of the FOIA. Paragraph (c) amends section 45(3) of the FOIA so as to provide for the possibility of making more than one code of practice under section 45, each of which makes different provision for different public authorities.

394. Subsection (6) inserts into section 84 of the FOIA, which defines the terms used in that Act, a definition of the new term "dataset".”