

UK OPEN
GOVERNMENT
CIVIL SOCIETY NETWORK

Response: The marginal cost restriction on public sector data re-use: call for evidence

September 2026

About the UK Open Government Network

The UK Open Government Network (UK OGN) is a coalition of civil society organisations and active citizens committed to promoting greater transparency, accountability and participation in public policy and public service delivery.

UK OGN coordinates civil society participation in the UK's Open Government Partnership process and works with the government (Cabinet Office) through the UK Multi-Stakeholder Forum for Open Government.

It has led civil society input into six National Action Plans for Open Government. This response has been agreed by the UK Open Government Network Steering Committee

Response Introduction

UK OGN welcomes the opportunity to respond to the Department for Digital, Culture, Media and Sport's call for evidence on the marginal cost restriction on public sector data re-use.

Our starting point is that open by default should remain the fundamental principle governing accessible public sector data. Indeed, the call for evidence itself states that the Government currently operates an "Open by Default" policy approach, under which accessible public sector data should be made available for reuse as open data.

Public sector data is an economic asset, but it is also democratic and social infrastructure. It enables businesses to innovate, researchers to generate knowledge, journalists and civil society to scrutinise power, public bodies to improve services, and citizens to understand and participate in government.

We recognise the legitimate challenge identified by the government. Collecting, maintaining and improving high-quality data requires investment, and there may be circumstances in which public bodies can reasonably charge for genuinely additional products or services.

However, the fact that public data has commercial value does not mean that charging for access to it will maximise its value to society. Public value includes the wider economic, democratic and social benefits generated through reuse, as well as direct revenues received by the government.

There is significant evidence of these wider benefits.

Companies House reported in 2025 that, following the introduction of free access to company information, free requests to the register increased from 1.3 billion in 2015-16 to more than 16.5 billion in 2023-24. Research commissioned by Companies House and BEIS estimated the value of its registers to users at between £1 billion and £3 billion per year.

A different example is provided by Transport for London. The Government's 2026 Digital and Data Benefits Framework cites TfL's open data as adding £130 million to the London economy each year, including an estimated £70-95 million annually in time savings for commuters.

Although these estimates measure different forms of value, both demonstrate why the relevant comparison is not simply between zero revenue and charging revenue, but between the total public value generated under different models.

UK OGN therefore recommends that:

1. open or marginal-cost reuse remains the presumption for data created or maintained as part of the public task;
2. charging above marginal cost is permitted only exceptionally, where evidence demonstrates that it will deliver greater overall public value;
3. government maintains a clear distinction between underlying public data and genuinely additional commercial products and services built around it; and
4. any exceptions are transparent, independently overseen, time-limited and subject to challenge and review.

The open-by-default principle is longstanding UK policy rather than a recent convention.

The UK's first Open Government Partnership National Action Plan, published in 2011, committed to a phased introduction of "Public by Default"; the 2012 Open Data White Paper established a presumption to publish; the UK subsequently championed "Open Data by Default" internationally through the G8 Open Data Charter, agreed in June 2013; and the 2020 National Data Strategy reaffirmed open data as an important part of the UK's data policy. The UK Government Licensing Framework continues to mandate the Open Government Licence as the default licence for Crown bodies.

The government should therefore explain what has changed in the evidence, technology or assessment of public value to justify a material departure from that position.

1. What are the benefits and drawbacks of the current rules on charging for the re-use of public sector data?

There is a substantial economic as well as democratic case for the existing presumption.

Government has considered this question before. The 2008 study *Models of Public Sector Information Provision via Trading Funds*, commissioned jointly by HM Treasury and the then Department for Business, Enterprise and Regulatory Reform, examined profit-maximisation, cost-recovery, marginal-cost and zero-cost models for public sector information. It considered major information providers including Companies House, Ordnance Survey, the Met Office and Land Registry, and distinguished between raw and value-added information.

Its analysis found a strong welfare case for pricing basic public sector information at no more than marginal cost.

That evidence remains highly relevant. The government should therefore explain what material changes now justify reconsidering the underlying conclusion.

Subsequent UK experience reinforces the case for open provision. Companies House and TfL demonstrate substantial downstream value from data made freely reusable.

Open data also supports:

- transparency and accountability;
- investigative journalism and civil society scrutiny;
- academic and public-interest research;
- competition and lower barriers to entry;
- innovation by SMEs and start-ups;
- reuse and interoperability between public bodies; and
- reduced legal and administrative transaction costs through standard licensing such as the Open Government Licence.

The UK's open-data architecture was deliberately designed around reuse. In 2010, the Public Sector Transparency Board - whose members included Sir Tim Berners-Lee and Professor Sir Nigel Shadbolt - developed Public Data Principles including that public data should be published in reusable form, freely available for lawful use and actively promoted for reuse.

Sir Tim Berners-Lee's early work on UK open data also emphasised the value of releasing underlying public data in reusable form so that businesses, researchers and civil society could develop additional products and services around it. That

distinction remains directly relevant to this consultation.

The drawback identified by the government is real: maintaining and improving high-quality data requires investment, while the marginal cost of providing an additional digital copy may be negligible. But this is first a question about how valuable public infrastructure should be funded. It does not follow that charging users for the underlying data will maximise public value. The government should compare the whole-system economic and social value of alternative models, rather than treating revenue received by the originating public body as the principal measure of value.

International practice

International practice also provides relevant evidence on charging for public sector data.

Under Commission Implementing Regulation (EU) 2023/138, the EU requires designated high-value datasets in six categories - geospatial; earth observation and environment; meteorological; statistics; companies and company ownership; and mobility - to be made available free of charge, in machine-readable form and through APIs and, where relevant, bulk download.

Australia provides a particularly relevant comparator. The Australian Information Commissioner's Principles on open public sector information establish open access as the default position and state that public access should be facilitated at the lowest reasonable cost. Current Australian FOI guidance confirms that this objective derives from section 3(4) of the *Freedom of Information Act 1982*, while the Principles also promote publication that is machine-readable and reusable on open licensing terms.

The debate that led to those Principles closely parallels the issue raised by this consultation. As recorded in the OAIC's report on their development, the Victorian Spatial Council argued that maintaining dynamic datasets and the infrastructure required to provide access can be costly, and suggested that revenues from spatial information should be reinvested in maintaining the data. Other stakeholders opposed treating access to public information as a source of income.

The OAIC's response was significant. It emphasised that minimising the cost of public access is important to maximising accessibility and cited Australian Government cost-recovery guidance recommending that, where information is produced for the community and its use by one person does not diminish its availability to others, agencies should favour free release.

That is particularly relevant to digital public data, which can generally be reused repeatedly without being depleted. It suggests that the existence of substantial

maintenance costs does not, by itself, establish a case for recovering those costs through charges on reuse.

The EU and Australian regimes are not identical to the UKs, but both address the charging question directly. They provide useful comparators against which the government should assess whether widening above-marginal-cost charging would represent a departure from the wider policy direction towards lowering barriers to reuse of high-value public data.

2. Are you aware of public sector data assets that you would like to re-use, but which are not disclosed for re-use?

UK OGN is not responding on behalf of a single commercial re-user and has not undertaken an audit of individual datasets for this submission.

However, there are categories of public information where reliable, comprehensive and reusable publication is particularly important to open government, including:

- public spending, grants and contracting data;
- company and beneficial ownership information;
- environmental information;
- geospatial information;
- transport and mobility data;
- public service performance data; and
- information supporting scrutiny of government decision-making.

Across public-sector information more generally, barriers to reuse frequently arise because publication is incomplete, difficult to discover, inconsistent between bodies, poorly documented, provided in unsuitable formats or supported by inadequate metadata.

The government should treat these as data-governance and open-government problems in their own right.

The 2012 Open Data White Paper did not treat publication as the end point. It envisaged progressive improvement towards structured, machine-readable, openly formatted and linked data.

The historical policy response to poor quality and usability was therefore to improve the infrastructure supporting open data, not to make openness dependent upon users' ability to pay.

The consultation also notes that public bodies can struggle to establish whether information falls inside or outside their "public task" because public tasks may be complex, diffuse and inadequately documented.

UK OGN regards this first as a transparency and governance issue. As the call for evidence itself explains, the RPSI exclusion for information outside a body's public task applies only where the scope of that public task is transparent and subject to review. Government should therefore prioritise clear, published and reviewable public-task statements across public bodies rather than use uncertainty over the public task as a reason to create wider routes around RPSI.

3. Do current rules on charging affect whether public bodies make data available for re-use, or whether they meet users' needs?

They may do in some circumstances, particularly where users require services substantially beyond ordinary publication of the underlying information.

However, the scale and significance of this effect should be evidenced before legislation is changed.

Barriers to reuse can result from legacy technology, inadequate skills and capacity, poor data governance, unclear responsibilities, inconsistent standards, insufficient core funding and organisational culture. Greater charging powers will not necessarily address these underlying causes.

Previous UK policy provides a directly relevant alternative model.

In December 2014, the Environment Agency made its national flood-risk datasets open data. The Environment Agency explained at the time that removing cost barriers was intended to create opportunities for developers, businesses and communities, and confirmed that the data would be available free of charge and with minimal restrictions.

The decision is particularly relevant because the government recognised that opening the data raised a funding issue. Public Sector Transparency Board consideration of early release included the technical costs and revenue implications of moving the data to permanent open provision.

The government therefore faced the same basic problem identified in this consultation - valuable public data generated revenue, opening it created a funding challenge, and wider reuse had substantial public value - and chose to support the transition to open provision rather than preserve charging.

UK OGN recommends a clear distinction between:

- underlying data created or maintained as part of the public task, which should ordinarily remain openly reusable; and
- genuinely additional products or services, for which charging may be appropriate.

Examples might include bespoke analysis, customised integration for a particular customer, enhanced service-level guarantees or specialist analytical products.

However, merely cleaning data, providing metadata, linking datasets, converting information into machine-readable form or providing a standard API should not by themselves transform public-task information into a commercial product.

The test should be whether there is material additional intellectual, technical or service input beyond what is reasonably necessary to make the underlying public data usable and reusable.

4. Is it appropriate for public bodies to charge above marginal costs if the revenues are used to improve data availability, data quality, infrastructure or public services?

The use to which revenues are put is relevant, but it is not sufficient justification for charging.

Charging may produce revenue to maintain a dataset while simultaneously reducing reuse by businesses, researchers, journalists, civil society organisations and other public bodies. The appropriate test is therefore whether charging produces greater net public value than open provision.

The interaction with HM Treasury's *Managing Public Money* is particularly important. The call for evidence itself notes that where government charges for services, the default approach under *Managing Public Money* is full-cost recovery unless Parliament has agreed otherwise.

Consequently, removing the RPSI marginal-cost restriction would not necessarily create a neutral space in which public bodies simply choose between equally weighted open and commercial models. Without additional safeguards, it could move information from a statutory marginal-cost presumption towards an administrative full-cost-recovery presumption.

The first potential approach described in the consultation is particularly significant because it envisages a category of data assets from which public bodies are required to generate revenue. Designation could therefore do more than permit charging: it could create an expectation or obligation to charge.

Any reform must address this explicitly.

The government should not merely lift the existing ceiling. Binding rules should establish:

- when charging is permissible;
- the basis on which charges may be calculated;
- an explicit continuing presumption of open provision;
- the evidence required to depart from that presumption; and
- arrangements for review and challenge.

Revenue may not translate into additional investment.

The call for evidence states that revenues could be invested in data infrastructure or public services but does not establish a mechanism by which this would be secured. *Managing Public Money* recognises that decisions about a charge-bearing service include whether the provider should retain income from charges. Retention should therefore not be assumed.

Nor does retention necessarily mean additional investment. Charging income could substitute for core funding that would otherwise have been provided through departmental settlements.

UK OGN therefore asks government to set out:

- whether charging revenue would be retained by the public body generating it;
- what mechanism would ensure that revenue intended for data infrastructure is genuinely additional rather than substituting for existing funding;
- how reliance on charging income would affect future core funding decisions; and
- how investment would be sustained in datasets of high democratic or social value but limited commercial value.

The last point is particularly important. If the quality and availability of public data increasingly depends upon its capacity to generate income, investment risks following commercial value rather than public value.

The Natural Capital and Ecosystem Assessment case study in the call for evidence illustrates the issue. The consultation notes that the programme is funded until 2029 and that decisions about maintaining these datasets remain to be made.

That is fundamentally a public funding decision. The 2014 Environment Agency flood-data release demonstrates that government has previously addressed a comparable problem by supporting a transition towards open provision rather than preserving charging.

The government should explain why a wider legal ability to charge is now preferable to addressing the funding requirement directly.

5. What principles should guide reform?

UK OGN supports the four principles proposed in the consultation but recommends adding the following.

- **Open by default.** Free or marginal-cost reuse should remain the presumption, with the burden of justification placed on departure from it.
- **Public value.** Decisions should assess economic, democratic and social value, not departmental revenues alone.
- **Necessity and proportionality.** Charging should only be introduced where it is necessary to achieve a legitimate objective, and no less restrictive means would achieve substantially the same outcome.
- **Transparency and accountability.** Decisions, supporting evidence, pricing methodologies, revenues and use of revenues should be published.
- **Equality of access and inclusion.** The government must assess impacts on SMEs, researchers, journalists, civil society organisations and individual citizens as well as large commercial users.
- **Competition.** Charging should not favour incumbents or create disproportionate barriers to market entry.
- **Interoperability and open standards.** Reform must avoid fragmentation of licences, formats, APIs and contractual conditions.
- **Non-exclusivity and non-discrimination.** Public information should not become a source of preferential access for particular organisations.
- **Independent oversight and redress.** Users should be able to challenge charging decisions and reuse conditions.
- **Reviewability.** Any designation allowing above-marginal-cost charging should be time limited and periodically reassessed.
- **Participation.** Data users should be involved in assessing proposed charging models and their effects.

For information with substantial relevance to transparency, democratic accountability or participation, there should be a particularly strong presumption against charging.

The principle of participation is not new in this context. The UK's 2016–18 Open Government National Action Plan contained a specific commitment to involve data

users in shaping the future of open data, stating that effective engagement with users in the public sector, private sector and civil society was essential.

6. Should public bodies determine which data assets they can charge for, or should a single body be responsible?

Individual public bodies should not be able to designate their own information as chargeable.

There is an inherent conflict of incentives where the body receiving additional revenue also determines whether it is entitled to collect that revenue.

Public bodies should be able to make proposals within a consistent national framework, but significant designations should be subject to independent or central oversight.

The framework should include:

- clear published criteria;
- a published public-value assessment;
- an assessment of impacts on transparency, participation, competition and equality of access;
- consultation with affected users;
- independent scrutiny or approval;
- an accessible review or appeals process; and
- a public register of datasets authorised for above-marginal-cost charging, including the justification, pricing model and review date.

7. What challenges might users face, and what measures should the government take?

The principal risks are affordability, reduced competition, licensing fragmentation, reduced interoperability and the practical erosion of access to information that remains technically available.

This is particularly important in the context of AI.

Authoritative, well-maintained public data is likely to become increasingly valuable for training, testing, evaluating and grounding AI systems. A charge readily affordable to the largest international technology companies may be prohibitive to UK start-ups, universities, civic technology organisations and public-interest researchers.

A charging regime could therefore give organisations with the greatest existing computational and financial resources preferential practical access to another important input - authoritative public data - increasing rather than reducing concentration.

This should be assessed as a competition and growth issue as well as an accessibility issue.

UK open-data policy has historically sought to lower the cost of access to government information so that businesses and others can build products and services around it. The Government's own 2026 Digital and Data Benefits Framework continues to cite significant economic benefits generated through open public data.

The government should explain why increasing the price of an important input into today's data and AI economy would better advance competition and innovation than lowering barriers to reuse.

Government should therefore:

- retain an openly available baseline dataset wherever enhanced services are chargeable;
- maintain standardised licences wherever possible;
- preserve interoperability;
- prohibit unnecessary downstream reuse restrictions;
- avoid exclusive arrangements;
- ensure transparent and predictable pricing;
- consider public-interest provisions for journalism, research and civil society; and
- provide effective mechanisms for redress.

8. What criteria and conditions should be met when determining whether it is possible to charge above marginal cost?

Above-marginal-cost charging should only be permitted where a public body can demonstrate that:

1. the information may lawfully be made available for reuse;
2. charging is expected to deliver greater overall public value than open provision;
3. the objective cannot reasonably be achieved through less restrictive means;
4. impacts on transparency, accountability and public participation have been assessed;

5. impacts on innovation, SMEs, research and competition have been assessed;
6. the effect on users with limited financial resources has been considered;
7. a credible and transparent mechanism exists to ensure that revenue is additional and supports the stated public-value objective;
8. the charge is transparent, proportionate and non-discriminatory;
9. licensing conditions preserve interoperability and minimise restrictions;
10. no inappropriate exclusive or preferential access arises;
11. wherever possible, the underlying public-task data remains openly available and charging relates to genuinely additional services; and
12. permission to charge is time limited and subject to periodic independent review.

The decision, supporting evidence and assessment should be publicly available.

Environmental information

The Natural Capital and Ecosystem Assessment example also demonstrates the need for particular care around environmental information.

Access to environmental information is governed by the Environmental Information Regulations 2004, while reuse is separately regulated through RPSI. The Information Commissioner's Office guidance on charging under the EIR makes clear that charges must be reasonable and addresses the limits on what authorities may recover through access charges.

The government should therefore explain how any new commercial reuse regime for environmental datasets would interact with the EIR and the UK's wider obligations under the Aarhus framework, ensuring that commercial arrangements do not undermine existing rights of public access.

The 2014 flood-data precedent is directly relevant. The government chose to move an important environmental dataset from paid to open provision despite the associated revenue implications. The government should explain why NCEA data now points towards the opposite policy solution.

9. Is there a particular approach you would recommend to enable public bodies to charge above marginal costs?

If the government concludes that additional flexibility is necessary, UK OGN recommends the narrowest legislative intervention capable of addressing the evidenced problem.

We would have significant concerns about creating a new category of public sector information excluded from RPSI altogether.

As the Information Commissioner's Office's Guide to RPSI demonstrates, RPSI does substantially more than regulate prices. The regulations establish a wider framework governing the reuse of public sector information and provide for complaints about how public bodies deal with reuse requests.

Among other protections, RPSI:

- establishes rights concerning reuse of information within scope;
- provides requirements concerning the form in which information should be made reusable;
- regulates conditions attached to reuse;
- contains non-discrimination requirements;
- restricts exclusive arrangements;
- requires transparency around charging and conditions; and
- provides routes for complaint and independent redress.

Removing a category of information from RPSI could therefore remove not only the marginal-cost restriction but this wider reuse framework. The government should explain explicitly which protections would continue to apply to any excluded category and through what legal mechanism. It should also explain how any new category would interact with the UK Government Licensing Framework, under which the Open Government Licence remains the default licence for Crown bodies and facilitates reuse free of charge.

If reform is considered necessary, the UK OGN would therefore prefer a narrow and conditional exemption from the marginal-cost provision while retaining the information within the wider RPSI framework, rather than a broad new exclusion from RPSI.

International practice supports this more constrained approach. The EU has retained a strong legal presumption of free reuse for designated high-value datasets, while Australian policy and cost-recovery guidance favour free release where public information is non-rival and produced for the community. These comparators reinforce the case for preserving the wider reuse framework and creating only a narrow, evidence-based route to above-marginal-cost charging where this can be justified.

Whichever mechanism is chosen, legislation should specify the conditions and charging basis rather than simply remove the existing marginal-cost ceiling.

There should also be an explicit safeguard against the interaction between RPSI reform and *Managing Public Money* inadvertently turning permission to charge into an expectation of full-cost recovery.

Wider open-government considerations

This proposal also raises a question of policy coherence.

The UK will become lead government co-chair of the international Open Government Partnership on 1 October 2026. The Government's 2026 co-chair candidature publication confirms that the UK will serve as lead government co-chair from 1 October 2026 to 30 September 2027.

Successive UK Open Government Partnership commitments have treated open and reusable public data as an important means of advancing transparency, participation, innovation and economic growth. The 2016–18 National Action Plan included a specific commitment to involve data users from government, business and civil society in shaping the future of open data.

If the government decides to proceed towards reform, UK OGN therefore recommends further engagement with civil society, journalists, researchers, SMEs, public bodies and other users before final proposals are settled.

UK OGN also asks that the government publish responses to this call for evidence, alongside a summary of the evidence received and an explanation of how it has informed any subsequent proposals.

A decision about the future of open by default should itself be reached through a process that meets open-government standards.

Response Conclusion

UK OGN recognises the legitimate challenge of ensuring sustainable investment in high-quality public sector data.

But public data should not be regarded simply as an asset from which the government should maximise direct financial return.

The government's own previous economic analysis found a strong case for marginal-cost provision of basic public sector information. Subsequent UK experience, including Companies House, Transport for London and Environment Agency flood data, demonstrates substantial downstream value from widening access. Internationally, the EU and a number of other advanced digital governments

continue to operate frameworks designed to facilitate open and low-friction reuse of public data.

These examples support a consistent proposition: the value of public data is often maximised not when the government sells access to it, but when the government makes the underlying resource widely reusable and allows others to create economic and social value from it.

The government should therefore establish a clear evidential case before materially weakening the existing presumption. It should also demonstrate, rather than assert, that any revenue raised would create additional investment in public data infrastructure.

Our recommended principle is straightforward:

- Open by default should remain the rule.
- Charging above marginal cost should be the exception.
- Where exceptions are justified, they should remain within a transparent and enforceable regulatory framework, apply only where greater overall public value can be demonstrated, and protect equality of access, competition, transparency, accountability and public participation.
- Where commercial users require genuinely enhanced products and services beyond the underlying public dataset, governments should explore models that recover the cost or value of those additional services without unnecessarily restricting access to the public information on which they are built.

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